New Pay Equity Law Becomes Reality In New Jersey

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Background

In an effort to close the "wage gap," the State Legislature overwhelmingly passed legislation that would amend the New Jersey Law Against Discrimination ("NJLAD") to provide greater clarity and rights for employees regarding equal pay for equal work. This expansive legislation was signed immediately by Governor Murphy.

Senate Bill No. 104 provides that it is unlawful for an employer to discriminate against a protected class of employees by paying them less compensation, including benefits, than employees who are not in that class for "substantially similar work, when viewed as a composite of skill, effort and responsibility."

The bill continues to recognize exceptions for differing compensation systems such as a seniority system, merit system, or other legitimate factors, such as training, education and experience.

The landmark nature of this bill, however, is reflected in the extraordinary remedies for equal pay violations that are provided to aggrieved workers who will now be eligible to earn treble damages, and up to six years of back pay. In addition, the applicable statute of limitations for equal pay claims under the NJLAD would restart with each paycheck that evidences such a violation.

What Employers Need to Know

In order to respond to this legislation, employers will have a lot of work to do to ensure compliance with the law and reduce the risk of a costly violation. Employers should immediately review their compensation systems to determine situations where employee groups that share common characteristics and perform "substantially similar" work are being

compensated differently. If the employer finds such a disparity it may not reduce the rate of compensation of any employee in order to comply with the proposed legislation.

In this regard, employers also should understand that although the new legislation arose from inequities based on gender, it applies to all protected groups under the NJLAD. The NJLAD prohibits differential treatment based on "race, creed, color, national origin, nationality, ancestry, age, sex (including pregnancy), familial status, marital status, domestic partnership or civil union status, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for military service, and mental or physical disability, perceived disability, and AIDS and HIV status."

Employers should identify work duties that may be considered "substantially similar" under the legislation. Those words are not defined in the legislation but the clear intent is that the duties do not need to be identical to fall within the legislative prohibition. As always, if an employer has any doubts regarding whether an employee falls within a protected class or is performing "substantially similar" work, they should consult with counsel especially given the serious penalties that may be imposed under the legislation.

Porzio's Employment Team is keeping a close eye on pending legislation that would provide sick leave rights for workers in the State. Assembly Bill A-1827 provides that eligible workers would accrue one hour of earned sick leave for every 30 hours worked. The bill has passed both houses of the legislature and is now on the Governor's desk for signature. Employers would be required to pay workers their normal wages and benefits for earned sick leave. In addition, employers are prohibited from retaliating or discriminating against employees because they requested or used earned sick leave. We will provide further information on the ramifications of this proposal if and when it is signed by the Governor, as is expected.

Key Takeaway

When Senate Bill No. 104 becomes law on July 1, 2018, employers must ensure that they fully understand the additional protections being provided to workers under the legislation and that supervisors and human resources staff have been fully trained in the requirements of this new law to avoid any risk of penalties due to non-compliance. We will be providing additional guidance on the implications of this new law, including the use of salary history to set compensation levels, in our next edition of Employment Law Monthly.