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New Pay Equality Poster and Notice Law Enacted in New Jersey

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On September 21, 2012, New Jersey Governor Christopher Christie signed into law a bill that will require many employers to post and distribute to employees a notice of their right to be free from gender-based pay discrimination in the workplace, and obtain employees' acknowledgment of receipt of the notice. The Governor also conditionally vetoed two other gender pay equality bills and vetoed another bill that would have required employers with state contracts to disclose certain gender and race information to the New Jersey Department of Labor (NJDOL).

New Workplace Poster and Notice

Under the new law (A2647), New Jersey employers with 50 or more employees must post and distribute to employees a new notice (to be drafted by the NJDOL) that details "the right to be free of gender inequity or bias in pay, compensation, benefits or other terms or conditions of employment" under the New Jersey Law Against Discrimination (NJLAD), Title VII of the Civil Rights Act, and the federal Equal Pay Act. Although there is some ambiguity about whether the distribution requirement applies to all employers, even those with fewer than 50 employees, it is likely that both the posting and distribution requirements are only applicable to employers with over 50 employees. While the law will become effective November 21, 2012, the required notice (which needs to pass through the lengthy regulation process) will likely not be available until after that date (potentially many months after that date).

The distribution requirements of the new law are extensive. Covered employers are required to distribute a copy of the notice: (1) to all employees no later than 30 days after it is issued by the NJDOL; (2) at the time of an employee's hiring; (3) to all employees annually on or before December 31 of each year; and (4) at any time upon the first request of an employee.

Employers may distribute the notice:

- By email;
- Via printed material "including, but not limited to, a pay check insert, brochure or similar informational packet provided to new hires, an attachment to an employee manual or policy book, or flyer distributed at an employee meeting"; or

- Through an Internet or intranet website “if the site is for the exclusive use of all workers, can be accessed by all workers, and the employer provides notice to the workers of its posting.”

Further, the distributed notice must be accompanied by an acknowledgment to be signed (or electronically verified) by the employee, affirming that the employee has read and understands the notice. The executed acknowledgment must be returned to the employer within 30 days of receipt of the notice. It is unclear, however, whether the acknowledgment requirement applies to every required distribution (for example upon hiring *and* annually) or just the *first time* an employee receives the notice.

Finally, employers are required to post and distribute the notice in English and Spanish, in addition to any other language (for which the NJDOL has made a poster available) that the employer reasonably believes is the first language of a significant number of its workforce.

The new pay equality notice adds to the growing list of notices that must be *distributed* to employees in New Jersey, not merely posted, including:

- Recordkeeping requirements notice, which must be posted and distributed at time of hire;
- Family Leave Insurance notice, which must be posted and distributed at time of hire, upon the first request of an employee, and when an employee gives notice of taking family leave; and
- Conscientious Employee Protection Act (CEPA) notice, which must be posted and distributed annually.

One important difference from these other notice laws, however, is that the new pay equality notice is the first notice for which an employer must obtain a signed acknowledgment from the employee that the notice has been received (although it is good practice for employers to obtain an acknowledgment for the other notices as well, to dispute a claim that the notices were not distributed).

Mini-Lilly Ledbetter Law Conditionally Vetoed

Also on September 21, Governor Christie conditionally vetoed bill A2650, which addresses the statute of limitations applicable to compensation discrimination claims under the NJLAD. The Governor endorsed the bill’s adoption of the “paycheck rule,” which allows an employee to recover for discriminatory compensation decisions made long ago if the effects of that decision continue to impact the employee’s present compensation. This interpretation of the statute of limitations in effect brings New Jersey statutory law in line with the federal “Lilly Ledbetter Fair Pay Act of 2009,” and conforms with the holding of the New Jersey Supreme Court in *Alexander v. Seton Hall University*, 204 N.J. 219 (2010). However, in his conditional veto message, the Governor objected to the bill’s attempt to dramatically expand existing law by “omitting an explicit limitation on the amount of back pay an employee can recover.” The Governor recommended that the bill be “aligned to mirror the provisions of the Ledbetter Act, and the holding of the New Jersey Supreme Court” to limit an employee’s back pay recovery to a two-year period (the NJLAD’s statute of limitations). The bill will now go back to the Legislature, which can attempt to override the veto or amend the bill to conform to the Governor’s comments.

Amendment of CEPA to Encompass Certain Information Collecting Conditionally Vetoed

Governor Christie also conditionally vetoed A2648, which would have amended CEPA to create a new class of employees protected from whistleblowing—those who seek information, or provide information, in furtherance of a potential or actual compensation discrimination suit or charge. In his veto message the Governor did not expressly oppose the content of the bill, but commented that the amendment was “inconsistent with the original intent” of CEPA, and proposed instead incorporating the additional protection language into the NJLAD. The Governor’s proposed new language does vary from the Legislature’s language, however, by only protecting those employees who *request* information, not those who *disclose* such information to others. The bill will now be returned to the Legislature for consideration of the Governor’s proposed amendment.

Reporting Requirements of Employers with State Contracts

Finally, Governor Christie vetoed A2649, which would have required employers that contract with the State of New Jersey to report information regarding the gender, race, job title, occupational category, and total compensation of every employee connected with the contract to the NJDOL. Governor Christie noted that the Prevailing Wage Act already requires employers to report information to the NJDOL regarding employees’ job title and rate of compensation and that the proposed bill would require reporting by contractors not subject the Prevailing Wage Act. In the Governor’s opinion the bill would not “tangibly improve pay disparity” and in fact “would burden countless employers with onerous reporting requirements, thereby driving up the cost of public contracts, which are ultimately shouldered by the taxpayer.”

Additional Information

If you have questions regarding these legislative developments, contact the Ogletree Deakins attorney with whom you normally work or the Client Services Department at 866-287-2576 or via email at clientservices@ogletreedeakins.com.

Note: This article was published in the September 24, 2012 issue of the *New Jersey eAuthority*.

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