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Lum Law Notes

Employment Law Alert

NJ Equal Pay Act

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Lum, Drasco & Positan LLC

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- **“Diane B. Allen Equal Pay Act” Signed Into Law, effective July 1, 2018**

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On April 24, 2018, Governor Murphy signed the Diane B. Allen Equal Pay Act into law. This new law, which takes effect on July 1, 2018, extends the protections of the New Jersey Law Against Discrimination beyond gender to apply to all employees in protected classes under the state’s anti-discrimination law with regard to equal pay. Under the new Equal Pay Act, it is an unlawful employment practice for an employer to pay an employee who is a member of a protected class at a rate of compensation, including benefits, which is less than that paid to an employee who is not a member of the protected class, for substantially similar work based upon skill, effort and responsibility.

New Jersey’s Law Against Discrimination defines the following as protected classes: race, creed, color, religion, gender, national origin, ancestry, age, marital status, familial status, affectional or sexual orientation, genetic information, pregnancy or breastfeeding, gender identity or expression, disability or handicap, atypical hereditary cellular or blood trait, and military or veteran service in the Armed Forces of the United States.

The new Equal Pay Act mandates that other than instances where a seniority or merit based payment system is utilized, employers must ensure that all employees performing substantially similar work as a composite of skill, effort and responsibility, are paid at the same rate, unless the employer can show that:

- The pay differential is based on one or more legitimate bona fide factors other than the protected characteristic, such as training, education or experience, or the quantity or quality of production;
- The bona fide factors are not based on, and do not perpetuate a differential in compensation based on sex or any other protected characteristic;
- Each bona fide factor is applied reasonably;
- One or more of the factors account for the entire wage differential; and
- The factors are job-related with respect to the position in question and based on a legitimate business necessity. A factor based on business necessity shall not apply if it is demonstrated that there are alternative business practices that would serve the same business purpose without producing the wage differential.

The new law also extends the anti-retaliation provisions of the New Jersey Law Against Discrimination to equal pay claims. Under the new provisions, employers are prohibited from:

- Taking reprisals against any employee for “requesting from, discussing with, or disclosing to, any other employee or former employee of the employer, a lawyer from whom the employee seeks legal advice, or any government agency, information regarding the job title, occupational category, and rate of compensation, including benefits, of the employee or any other employee or former employee of the employer,” regardless of whether there is a response to the request;
- Requiring, as a condition of employment, any employee or prospective employee to sign a waiver, or otherwise requiring an employee or prospective employee to agree not to request or to disclose compensation information.

In light of these provisions, employers must ensure that any confidentiality agreement or their employee handbook or any other policy document does not define “employee compensation” as a category of confidential information for which disclosure may result in action against the employee by the employer.

Employers should be further aware of the following points of law in the new Equal Pay Act:

- Employers cannot reduce the rate of compensation of any employee in order to comply with the Equal Pay Act;
- Comparisons of pay rate differentials can be based upon the rates of compensation for substantially similar positions in any of the locations of the employer’s operations;
- A two-year statute of limitations period applies to claims under the Equal Pay Act;
- Each payment violation constitutes a separate offense, and the two-year statute of limitations re-starts at the time of each payment offense;
- An employee who prevails on an equal pay claim or retaliation claim under the Equal Pay Act will be able to seek treble damages (three times the compensation differential), for each payment violation;
- Employees are permitted to recover up to six years of back pay in the event of a pay violation;
- Willful violation of the Equal Pay Act by the employer may result in punitive damages against the employer; and
- Any employer who enters into a contract with the State or other public body to perform public work shall be required to report information regarding compensation and hours worked by employees, categorized by gender, race, job title, ethnicity, and job category.

To confirm compliance with the new law, employers should review their compensation practices to ensure that employees conducting substantially similar work receive the same pay rate regardless of the locale of the employer’s facilities, or that there are verifiable bona fide factors to warrant a pay differential. Employers are further advised to review their employment policies, agreements, and handbook to assure that they do not restrict an employee from discussing employment compensation and do not require an employee to maintain employment compensation confidential as a condition of employment.

To discuss the new Equal Pay Act or to have your company’s policies and agreements reviewed for compliance with the new law, please contact one of the attorneys listed below:

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