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FEATURED ARTICLES

- **Your Travel Bags Are Packed, You're Ready to go but the IRS Says That Might Not Be So**
- **New Jersey's Paid Sick Leave Law – Employers' Questions on Implementation of the Law**
- **The Diane B. Allen Equal Pay Act is not Subject to Retroactive Application**

FIRM NEWS

Dennis J. Drasco received the Distinguished Alumnus Award from Rutgers Law School at the Annual Alumni Gala on November 1, 2018.

Wayne J. Positan was recognized as a "Band 1" Labor and Employment lawyer by Chambers USA "Leading Business Lawyers" for the 15th straight year. Chambers USA stated as follows: "Sources say Wayne Positan is 'a legend' and 'hands down one of the best labor and employment lawyers in the US.' He is knowledgeable across the full spectrum of employment issues, and has taken on very high-profile cases including wage and hour disputes and noncompete matters."

Steven J. Eisenstein has been named Vice-Chair Legislation of the Business Law Section of the New Jersey State Bar Association.

Christina Silva has been elected a Fellow of the Academy of New Jersey Management Attorneys (ANJMA). The Academy, in which there are presently only 27 Fellows, consists of the top labor and employment lawyers in the state who exclusively represent management/defendants in such matters.

Kevin F. Murphy served as a speaker during the National Business Institute's "Using Trusts in Estate Planning and Asset Protection" program held on November 13, 2018 in Hasbrouck Heights. Kevin presented on the topics "Using Irrevocable Life Insurance Trusts" and "Charitable Trusts: Setting Aside Assets and Tax Planning".

Adam P. Soloperto joined the Firm as an Associate with our Litigation Department. Adam is a former judicial law clerk to the Honorable Donald A. Kessler, Judge of the New Jersey Superior Court's Chancery division in Essex County. He is a 2017 graduate of Seton Hall University School of Law, where he was a member of the Editorial Board for the Seton Hall University Law Review.

The Firm is pleased to announce that fifteen of our attorneys, including two retired Superior Court judges associated with the Firm, have been named by the publisher of U.S. News & World Report to *Best Lawyers in America*® 2019 in the following areas:

Appellate Practice

Dennis J. Drasco
Wayne J. Positan

Arbitration

Hon. Donald J. Volkert, Jr. (ret.)

Commercial Litigation

Dennis J. Drasco
Kevin J. O'Connor
Wayne J. Positan
Scott E. Reiser
Paul A. Sandars III

Construction Law

Edward M. Callahan, Jr.
Bernadette Hamilton Condon
Dennis J. Drasco
Paul A. Sandars III

Corporate Law

Philip L. Chapman

Employment Law - Management

Elizabeth Moon
Wayne J. Positan
Daniel M. Santarsiero
Christina Silva

Family Law

Gina M. Sorge

Family Law Mediation

Hon. Richard C. Camp (ret.)

Labor Law - Management

Wayne J. Positan
Daniel M. Santarsiero
Christina Silva

Litigation - Construction

Edward M. Callahan, Jr.
Bernadette Hamilton Condon
Dennis J. Drasco
Paul A. Sandars III

Litigation - Insurance

Dennis J. Drasco

Litigation - Labor and Employment

Wayne J. Positan
Christina Silva

Litigation - Land Use and Zoning

Dennis J. Drasco

Litigation - Real Estate

Dennis J. Drasco

Personal Injury Litigation - Defendants

Cynthia A. Matheke

Personal Injury Litigation - Plaintiffs

Cynthia A. Matheke

Real Estate Law

Philip L. Chapman

The Firm was named “Best Law Firm” rankings for 2019 in the following areas:

METROPOLITAN TIER 1

Commercial Litigation
Construction Law
Employment Law-Management
Labor Law-Management
Litigation-Construction
Litigation-Labor & Employment

METROPOLITAN TIER 2

Arbitration
Corporate Law
Litigation-Land Use & Zoning
Litigation-Real Estate
Personal Injury Litigation-Plaintiffs
Real Estate Law

METROPOLITAN TIER 3

Personal Injury Litigation-Defendants

About *Best Lawyers*®

Since it was first published in 1983, *Best Lawyers*® has become universally regarded as the definitive guide to legal excellence. *Best Lawyers* lists are compiled based on an exhaustive peer review evaluation. Over 83,000 leading attorneys globally are eligible to vote, and they have received more than 13 million votes to date on the legal abilities of other lawyers based on their specific practice areas around the world. Lawyers are not required or allowed to pay a fee to be listed; therefore inclusion in *Best Lawyers* is considered a singular honor.

Your Travel Bags Are Packed, You're Ready to Go But the IRS Says That Might Not Be So

By Jack Baron

U.S. individual taxpayers who owe “seriously delinquent” taxes, interest and/or penalties to the Internal Revenue Service (“IRS”) now face the prospect that their passports may be revoked or seriously restricted.

Beginning in February 2018 and pursuant to Internal Revenue Code (“IRC”) Section 7345, the IRS began sending to the Department of State (“State Department”) certifications of unpaid taxes for individual taxpayers with “seriously delinquent tax debt.” After receiving the certification, the State Department may deny that person’s right to use, obtain or renew a U.S. Passport.



“Seriously delinquent” tax debt is defined as “an unpaid, legally enforceable federal tax liability” totaling more than \$51,000, inclusive of interest and penalties for which (1) A Notice of federal tax lien has been filed and all administrative remedies under IRC Section 6320 have lapsed or been exhausted, or (2) A levy has been issued. Tax debt includes U.S. individual income taxes, trust fund recovery penalties, business taxes for which the individual is liable and other civil penalties. It does not include other non-tax liabilities, such as Report of Foreign Bank and Financial Accounts (“FBAR”) assessments and criminal restitution assessments.

The \$51,000 threshold originally was \$50,000, but has been and will continue to be annually adjusted for inflation.

Statutory safe harbors from certification are provided for tax debt (1) being paid in a timely manner under an IRS approved installment plan; (2) being paid timely under an Offer in Compromise accepted by the IRS; (3) for which a collection due process hearing has been timely requested regarding a levy to collect the debt; or (4) for which collection has been suspended as the result of a request for innocent spouse relief having been made. Tax debt of individuals serving in a combat zone or contingency operations as defined in IRC Section 7508 are also exempt from certification. The IRS, in its discretionary authority, also has excluded from certification: (1) tax debt that is not collectible due to hardship; (2) tax debt that has resulted from identity theft; (3) tax debt owed by a taxpayer in a Disaster Zone; (4) tax debt owed by a taxpayer in bankruptcy; (5) tax debt of a deceased taxpayer; (6) tax debt that is the subject of a pending offer in compromise or installment agreement; and (7) tax debt with a pending adjustment that will result in no balance due.

At the time the IRS certifies seriously delinquent tax debt to the State Department, the IRS is required to provide written notification to the taxpayer. This is accomplished by the IRS sending Notice CP 508C to the taxpayer’s last known address.

The IRS also is required to inform the taxpayer in writing if it reverses the certification, by sending Notice CP 508R. The IRS will reverse a certification when the taxpayer and IRS enter into and installment arrangement; (2) the IRS accepts taxpayer’s offer in compromise; (3) the Justice department enters into a settlement agreement satisfying the debt; (4) collection is suspended because taxpayer seeks innocent spouse relief under IRC Section 6015; or (5) taxpayer makes a timely request for a collection due process hearing regarding a levy to collect the debt.

The IRS will not reverse certification of the tax debt where the taxpayer pays the debt below \$51,000, as said threshold may be further adjusted.

To discuss any of the above, please contact any of our Business attorneys:

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Philip L. Chapman	(973) 228-6786	pchapman@lumlaw.com
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Dennis J. Smith	(973) 228-6755	dsmith@lumlaw.com

New Jersey's Paid Sick Leave Law – Employers' Questions on Implementation of the Law

By Christina Silva

As October 29, 2018, the effective date of New Jersey's Paid Sick Leave Law approached, employers were faced with reviewing their time off policies based on a law that in many ways, raised more questions than answers. Since the New Jersey Paid Sick Leave Act applies to all New Jersey employers, regardless of the number of its employees, employers were not exempt from examining, and more often than not, revising, their existing sick leave and time off policies. With multiple questions directed at the New Jersey Department of Labor (DOL) regarding implementation of the law, the DOL compiled numerous "frequently asked questions"¹ to clarify the requirements of the law.



Whether the law has been clarified is subject to interpretation, however, since the DOL's proposed regulations applicable to implementation of the law,² have yet to be finalized. Despite the proposed regulations, along with the DOL's "frequently asked questions", uncertainty remains with regard to several areas including how sick leave is accrued, paid or carried over at year end, and recorded. The proposed regulations were subject to public comment through December 14, 2018, so the regulations may still be further defined and clarified. Despite the proposed regulations not yet being finalized, and apparent questions arising from factual scenarios not addressed therein, the proposed regulations and frequently asked questions and answers available on the DOL's website provide some guidance to an employer at this time for compliance with the New Jersey Paid Sick Leave Law.

Employers with existing paid time off (PTO) policies which provide up to 40 hours of paid sick time in a benefit year applicable to all employees, i.e., the calendar year rather than an employee's anniversary year, will be in compliance with the law, provided the employer permits either payout of accrued unused sick time at the end of the year or carry over of up to 40 hours in the following benefit year. If an employer decides to permit carry over of earned sick time, the employer is not required to provide more than 40 hours of paid sick time in any benefit year. Employers will not be required to pay out unused sick time upon termination of employment, unless a company policy provides for such payment.

Employers are now required to post a notice of employee rights³ with regard to the paid sick leave law which can be obtained from the DOL's website. The notice identifies the employer's benefit year, and addresses accrual, availability of earned sick leave for use, notice requirements, acceptable reasons to use earned sick leave, payout or carry over of unused sick leave, and protection against retaliation for using earned sick leave. The required notice may be posted on site, distributed to employees via email, or otherwise posted via electronic means.

In addition to posting the notice, employers should ensure their existing sick leave policies are compliant with the requirements of the paid sick leave law, and otherwise update them if needed. *For more information or assistance in updating employer sick leave or paid time off policies, please contact Christina Silva, Esq., Vice-Chair of the firm's Labor & Employment Group at csilva@lumlaw.com or (973) 403-9000.*

¹ https://nj.gov/labor/forms_pdfs/lwdhome/Legal/earnedsickleave.pdf

² https://nj.gov/labor/forms_pdfs/Roles/Legal/FinalAdminDecisions/2018/prn2018095.pdf

³ https://nj.gov/labor/forms_pdfs/mw565sickleaveposter.pdf

The Diane B. Allen Equal Pay Act is not Subject to Retroactive Application

By Daniel M. Santarsiero

The "Diane B. Allen Equal Pay Act, ("the Act" or "NJEPA") N.J.S.A. 34:11-56.13 was signed into law on April 24, 2018 with an effective date of July 1, 2018. The Act is an amendment to the New Jersey Law Against Discrimination N.J.S.A. 10:5-1, *et seq.*, and prohibits an employer from paying an employee who is a member of *any* protected class at a rate of compensation less than that paid to employees who are not members of that protected class for "substantially similar work." N.J.S.A. 10:5-12(t).



The Act allows for a six-year statute of limitations period in situations where the discriminatory pay disparity is continuous. However, the NJEPA does not explicitly state whether it could be applied retroactively to reach conduct that occurred prior to the Act's effective date of July 1, 2018. This question has now been answered in the recent United States District Court's Decision in Perrotto v. Morgan Advanced Materials, PLC 2019 U.S. Dist. LEXIS 6745*.

In Perrotto, Plaintiff was terminated from her position as Controller/Human Resources with Morgan Advanced Materials, PLC and Morgan Advanced Ceramics, Inc. Although Plaintiff's termination occurred prior to the Act's effective date, Perrotto filed suit alleging violations of NJEPA on account of a gender-based disparity in pay and retaliation by her former employer. Defendants argued that NJEPA is not subject to retroactive application and filed a motion to dismiss Plaintiff's NJEPA claims with prejudice, on grounds that NJEPA was not enacted at the time Perrotto was terminated.

Determining that the Act could not be applied retroactively to conduct occurring prior to its effective date, the United States District Court based its decision upon theories of statutory construction and found: (1) The legislative history of NJEPA suggests that the legislature did not intend for retroactive application; (2) Retroactivity would not be curative because the statute is the "first of its kind"; (3) The litigant's expectations favored prospective application. Based upon

the foregoing, the court dismissed the Plaintiff's NJEPA gender pay disparity and retaliation claims with prejudice.

While Perrotto represents a significant decision which limits NJEPA's coverage to actions that occur after its effective date, the Act imposes substantial penalties for violations occurring after the July 1, 2018 effective date of the statute. Therefore, employers should engage in a systematic review of their compensation policies and practices to ensure NJEPA compliance as there exists the potential for treble damages and counsel fee shifting in the event of potential litigation. For further information or assistance with NJEPA compliance, please contact Daniel M. Santarsiero at (973) 228-6780.

LUM, DRASCO & POSITAN LLC provides a complete range of legal services in many specialized areas including:

Banking • Corporate • Insurance • Public Finance • Bankruptcy • Creditor's Rights • Labor and Employment • Real Estate • Condemnation • Environmental • Litigation • Taxation • Construction • Fidelity and Surety • Professional Liability • Trusts and Estates

Lum Law Notes is a publication intended for the clients of Lum, Drasco & Positan LLC and other interested persons. It is designed to keep its readers generally informed about developments in the firm and its areas of practice and should not be construed as legal advice concerning any specific factual situation

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