New Jersey Legislature Passes Sweeping Pay Equity Legislation

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Yesterday, the New Jersey Senate and Assembly passed comprehensive [pay equity legislation](http://www.njleg.state.nj.us/2018/Bills/A0500/1_I1.PDF). The legislation passed both houses with significant bi-partisan support and it is expected that Governor Murphy will soon sign the legislation into law. Once in effect, the legislation, which amends the New Jersey Law Against Discrimination (“the LAD”), will be the most wide-ranging pay equity law in the United States.

Significantly, unlike most pay equity laws passed in recent years by other states which target unlawful pay discrimination of women, the New Jersey law will **prohibit pay discrimination of employees in any protected class**. Specifically, the legislation makes it an unlawful employment practice to discriminate against a member of any protected class by compensating the employee at a lesser rate of pay, benefits, or other forms of compensation than an employee who is not a member of the protected class for “substantially similar work.” The “substantially similar” standard, which diverges from the “equal work” standard of the federal Equal Pay Act, mirrors the California Fair Pay Act. Moreover, the legislation provides that comparisons of wage rates shall be based on wage rates in **all** of an employer’s operations or facilities regardless of where located.

An employer will be permitted to pay a different rate to an employee if it can show that the positions are not “substantially similar” or that the difference in compensation is based on a seniority system, merit system, or bona fide factors other than the characteristics of members of the protected class such as training, education, experience, or the quantity or quality of production. Importantly, an employer may not remedy a pay disparity by reducing the compensation of other employees.

In addition, the legislation would:

* Make each occurrence of a pay disparity a violation, causing the statute of limitations to restart each time a paycheck is issued;
* Allow an individual to collect back pay for the entire period during which the pay disparity occurred up to a total of six years;
* Permit the award of treble damages for violations in addition to all other remedies allowed by the LAD;
* Prohibit an employer from taking reprisals against an employee for requesting, discussing, or disclosing information about job titles, occupational categories, rates of compensation, gender, race, ethnicity, military status, or national origin of employees or former employees;
* Prohibit an employer from requiring, as a condition of employment, any employee or prospective employee to waive rights under the law; and
* Require public works contractors to provide information concerning compensation and hours worked by employees categorized by gender, race, ethnicity, and job category.  The data regarding compensation and hours worked will be required to be reported in the form of pay bands that are to be established by the Commissioner of Labor and Workforce Development.