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# The New Jersey Equal Pay Act



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# THE “DIANE B. ALLEN” EQUAL PAY ACT

# WHAT IS THE ACT'S EFFECT?

## **PROTECTS MEMBERS OF PROTECTED CLASSES FROM PAY DISPARITY**

Employers are prohibited from paying any of its employees who is a member of a protected class less than the rate of compensation paid by the employer to employees who are not members of the protected class for substantially similar work, when viewed as a composite of skill, effort, and responsibility.

## WHO IS AN EMPLOYER?

- All persons including, one or more individuals, partnerships, associations, organizations, labor organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and fiduciaries. An 'employer' also includes the State and any political or civil subdivision thereof, and all public officers, agencies, boards of bodies.
- Both public and private employers are covered by the Act.

## WHO IS A MEMBER OF A PROTECTED CLASS?

- An employee who has one or more characteristics, including race, creed, color, national origin, nationality, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy, sex, gender, identity or expression, disability or atypical hereditary cellular blood trait of any individual, or liability for service in the armed forces, for which an employer is prohibited from discriminating against.

## **PROHIBITS EMPLOYER FROM REDUCING RATES OF PAY TO MAINTAIN COMPLIANCE WITH ACT**

An employer that is paying a rate of compensation in violation of the Act is prohibited from reducing the rate of compensation of any employee in order to maintain compliance with the Act.

A different rate of compensation may be paid if the employer demonstrates that the differential is made pursuant to a seniority system, merit system, or the employer demonstrates:

- 1. ) The differential is based on one or more legitimate bona fide factors other than the characteristics of members of the protected class, such as training, education or experience, or the quantity or quality of production;
- 2. ) That the factor or factors are not based on, and do not perpetuate a differential in compensation based on sex or any other characteristic of members of a protected class;
- 3.) That each of the factors is applied reasonably;
- 4. ) That one or more of the factors account for the entire wage differential; AND

- 5.) That 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 does not suffice if it is demonstrated that there are alternative business practices that would serve the same purpose without producing a wage differential

## **PROHIBITS EMPLOYERS FROM RETALIATING AGAINST EMPLOYEES FOR MAKING DISCLOSURES REGARDING PAY AND BENEFITS**

Employers are prohibited from retaliating against an employee or former employee for requesting from (regardless of whether the request was responded to), discussing with or disclosing to (1) any other employee or former employee of the employer, (2) the employee's lawyer, or (3) any government agency any of the following:

- 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.
- The gender, race, ethnicity, military status, or national origin of the employee or any other employee or former employee of the employer.

The Act also prohibits employers from requiring, as a condition of employment, an employee or prospective employee to sign a waiver or agree to not make any of the disclosures mentioned in the last slide.

## **PROHIBITS EMPLOYERS FROM RETALIATING AGAINST EMPLOYEES FOR SEEKING ADVICE**

Prohibits employers from retaliating against employees for seeking legal advice pertaining to the Act and sharing relevant information with legal counsel or a governmental entity.

## WHEN DOES THE CLOCK BEGIN TO RUN?

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## **6 YEARS FROM LAST DISCRIMINATORY PRACTICE OR DECISION**

The statute of limitations (6 years) restarts on each occasion that an individual is affected by the application of a discriminatory compensation decision or other practice, including but not limited to, each occasion that wages, benefits, or other compensation are paid, resulting whole or in part from the discriminatory decision or other practice.

## **EMPLOYEE IS ENTITLED TO BACKPAY UP TO 6 YEARS**

Employees may obtain relief for back pay for up to 6 years for the entire period of time in which a violation regarding discrimination in compensation or conditions of employment has been continuous, if the violation continues to occur within the statute of limitations.

# REMEDY

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## TREBLE DAMAGES

If a jury determines that an employer violated the pay equity section of the proposed law, the judge would be required to award “three times any monetary damages” (treble damages). Where an employee brings a charge before the New Jersey Division of Civil Rights, the director would be permitted to award treble damages.