

## Equal Pay Rights in New Jersey: What Employees Need to Know

Results achieved in prior matters are not meant to be a guarantee of success as the facts and legal circumstances vary from matter to matter.

The NJLAD already prohibits discrimination against employees on the basis of membership in a protected class and prohibits retaliation against employees who complain about said discrimination, but. The Equal Pay Act prohibits employers from paying different compensation to protected class employees who perform substantially similar work when viewed “as a composite of skill, effort and responsibility.” Compensation is defined as wages, benefits or other compensation, and any comparison of wage rates must be based on the wage rates in all of an employer’s operations or facilities.

Lowering the wage rate of the higher paid group, if it is found to be discriminatory, is not an option.

The statute of limitations for equal pay violations is six (6) years. In addition, each instance of discrimination (i.e. – each time an employer engages in an equal pay practice violation), restarts the statute of limitations. This statute is much longer than the two year statute of limitations which applies to all other NJLAD violations. In addition, the Equal Pay Act prohibits employers from requiring employees to consent to a shortened statute of limitations for this claim.

There are noteworthy exceptions to the broad prohibition against equal pay discrimination. If an employer can show that it has a seniority or merit system on which pay distinctions are based, there may not be an equal pay violation. In addition, if an employer can show any of the following, it will not be held liable for equal pay discrimination:

- That the differential is based on one or more legitimate, bona fide factors other than the characteristics of the members of the protected class, such as training, education, or experience or the quantity or quality of work production;
- That the factor or factors are not based on, and do not perpetuate differential compensation based on gender or any other characteristics of members of a protected class;
- That each of the factors is applied reasonably;
- That one or more of the factors account for the entire wage differential and not just part of the wage differential.
- That the factors are job-related with respect to the position in question and based on a legitimate business necessity.

Note that a factor will not be found to be based on job-necessity if there are alternative business practices that would serve the same business purpose without producing the wage differential.

An employee can win treble damages if there is proof the employer retaliated against him or her for requesting, discussing or disclosing to any other employee, any information regarding employee compensation. So, under the Equal Pay Act, an employer cannot prohibit its employees from comparing salaries. Likewise, an employer cannot prohibit an employee from discussing with a lawyer, from whom the employee seeks legal advice, or from any government agency, any information regarding employee compensation.

### Salary History Ban

The New Jersey Law Against Discrimination forbids employers from asking about a job applicant's salary history, including the current salary of the potential candidate, compensation and benefits. It prohibits employers from using past salary information to determine a salary amount for the potential employee, and also forbids an employer from screening job applicants by using salary information to satisfy a minimum or maximum criteria.

An employer cannot retaliate against an employee who requests that a co-worker provide information about his or her salary in order to investigate the possibility of discrimination in pay and benefits.

## **Pay Transparency**

New Jersey requires employers to provide transparency in hiring and promotional opportunities by disclosing certain compensation and benefits information.

Employers must disclose the hourly wage or salary (or ranges) and provide a general description of benefits and other compensation programs for which an applicant would be eligible to receive if hired.

With respect to promotional opportunities, prior to making a promotional decision, employers are required to make reasonable efforts to announce or post promotional opportunities to all current employees in the affected departments. The only exception to the notification requirement is for the promotion of a current employee that is awarded on the basis of years of experience or performance. Employers are further not prohibited from making promotional decisions on an emergent basis due to unforeseen circumstances.

The law applies to employers that 1) employ 10 or more employees over 20 calendar weeks, and 2) do business, employ persons or take applications for employment within New Jersey.

If you believe you're being underpaid because of your gender, race, or membership in any protected class—or if you've faced retaliation for discussing pay—you may have a legal claim under New Jersey's Equal Pay Act. The experienced employment lawyers at Wilentz, Goldman & Spitzer P.A. can help you understand your rights and fight for fair compensation. **Contact us today for a confidential consultation.**

**To speak with an attorney about your legal options, please call: 732-352-9858.**