

## Employment Law Update: October is National Disability Employment Awareness Month

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In 1945, President Harry Truman established October as National Disability Employment Awareness Month. However, it took decades for real legislative gains to be made for the employment of persons with disabilities. It was not until 1973, almost 30 years later, that the [Rehabilitation Act](#) was passed, and not until 1990, 45 years later, that the [Americans with Disabilities Act](#) was passed. In his proclamation announcing this year's National Disability Employment Awareness Month, President Joseph Biden asked that we "acknowledge workers with disabilities who make our communities, our economy and our Nation stronger."

### **The New Jersey Model Employer of People with Disabilities ("SAME") Law**

New Jersey recently passed the [State as a Model Employer of People with Disabilities \("SAME"\) Act](#), which increases the ability of the significantly disabled to obtain employment. The new law requires the State to establish a "fast track hiring and advancement" employment opportunity program for qualified persons with "significant disabilities." The Civil Service Commission, in conjunction with the Division of Equal Opportunity and Affirmative Action, is tasked with developing the program.

### **Who Qualifies As A Person with "Significant Disabilities?"**

Under New Jersey's new law, a person with "significant disabilities" is a person whose "physical or mental impairments impact the ability to participate in the competitive hiring and promotion process within the State workforce." This law provides guidelines to determine which individuals qualify as persons with significant disabilities. Those criteria include, but are not limited to, the receipt of Social Security Disability Insurance or Supplemental Security Income, supports or benefits from the Division of Developmental Disabilities, the Division of Mental Health and Addiction Services, the Division of Vocational Rehabilitation Services, or a disabled veterans' benefit program. A person with "significant disabilities" must provide proof or documentation of their status.

### **Employment Under the Program**

A person with "significant disabilities" will be eligible first for temporary appointment to an "unclassified service or noncompetitive position" within the Civil Service. Once this person shows proof of eligibility for employment and is observed on the job to establish that they can perform the duties of the position, their employment can be made permanent. There is also a working test period within which the employee must be provided interim progress reports and a final progress report.

## **Private Employment of Persons with Significant Disabilities**

Currently, both federal and New Jersey State law provide different rules for the employment of persons with significant disabilities. These include the ability of employers to pay below minimum wage for employees whose productive capacity is impaired by a disability. However, the current legislative trends, both in New

Jersey and federally, are moving away from a lower wage standard for significantly disabled employees. Instead, legislation has been proposed to give tax credits and other supports to businesses that hire persons with significant disabilities. For example, Senate Bill 2806, currently pending in the New Jersey legislature, would provide business tax and gross income tax credits to private businesses that employ certain persons with development disabilities.

**TAKEAWAY:** The State of New Jersey is attempting to become a model employer of people with disabilities. If you are an employer and want to employ a person with a disability, or need assistance with any other federal or New Jersey employment law, contact [Stephanie Gironda](#) or any member of the Wilentz [Employment Law](#) Team.

#### **Attorney**

- Stephanie D. Gironda

#### **Practice**

- Employment Law