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New Jersey Department of Labor Proposes Rules to Implement New Pay Equality Poster and Notice Requirements

January 9, 2013

On September 19, 2012, New Jersey Governor Chris Christie signed a law requiring employers in the State of New Jersey with more than 50 employees to post and distribute notification to employees detailing "the right to be free of gender inequity or bias in pay, compensation, benefits or other terms or conditions of employment" under the New Jersey Law Against Discrimination, Title VII of the Civil Rights Act of 1964, and the Equal Pay Act of 1963. For more on the requirements of the new law, see our past client alert: New Jersey Governor Signs Law Requiring New Pay Equality Posters and Notices.

Although the law was scheduled to take effect on November 19, 2012, the New Jersey Department of Labor and Workforce Development (the "Department") stated that it would not take effect until the Department issued the "form of notification" by regulation. For more on the Department's update, see our past client alert: Regulatory Process Delays New Jersey's New Pay Equality Poster and Notice Requirements from Taking Effect .

On January 7, 2013, the Department took the first steps in the regulatory process, issuing proposed rules to implement the new pay equality poster and notice requirements and proposing the form of notification.

Although the proposed rules primarily restate the requirements set forth in the statute, they provide some clarification on two issues. According to the proposed rules: (1) the statute covers employers in New Jersey having a total of 50 or more employees, *whether those employees work inside or outside the state*; and (2) an Internet or intranet site for exclusive use by the employer's employees and to which all employees have access would be an acceptable means of satisfying the conspicuous posting requirement.

As for the *proposed* form of notification, it reads:

Right to be Free of Gender Inequity or Bias in Pay, Compensation, Benefits, or Other Terms and Conditions of Employment

New Jersey and federal laws prohibit employers from discriminating against an individual with respect to his/her pay, compensation, benefits, or terms, conditions or privileges of employment because of the individual's sex.

FEDERAL LAW

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on, among other things, an individual's sex. Title VII claims must be filed with the United States Equal Employment Opportunity Commission (EEOC) before they can be brought in court. Remedies under Title VII may include an order restraining unlawful discrimination, back pay, and compensatory and punitive damages.

The Equal Pay Act of 1963 (EPA) prohibits discrimination in compensation based on sex. EPA claims can be filed either with the EEOC or directly with the court. Remedies under the EPA may include the amount of the salary or wages due from the employer, plus an additional equal amount as liquidated damages.

Please be mindful that in order for a disparity in compensation based on sex to be actionable under the EPA, it must be for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

There are strict time limits for filing charges of employment discrimination. For further information, contact the EEOC at 800-669-4000 or at www.eeoc.gov.

NEW JERSEY LAW

The New Jersey Law Against Discrimination (LAD) prohibits employment discrimination based on, among other things, an individual's sex. LAD claims can be filed with the New Jersey Division on Civil Rights (NJDCR) or directly in court. Remedies under the LAD may include an order restraining unlawful discrimination, back pay, and compensatory and punitive damages.

Another State law, N.J.S.A. 34:11-56.1 et seq., prohibits discrimination in the rate or method of payment of wages to an employee because of his or her sex. Claims under this wage discrimination law may be filed with the New Jersey Department of Labor and Workforce Development (NJDLWD) or directly in court. Remedies under this law may include the full amount of the salary or wages owed,

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For feedback on the proposed rules, the Department has scheduled a public hearing for January 30, 2013, and is asking for written comments by March 8, 2013. If you have any questions or concerns regarding the new law or proposed rules, please contact your Proskauer lawyer.

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