

# EMPLOYMENT LAW SUMMARY

## New Jersey: Fair Employment Laws - Overview



*Because You're Different*

In addition to federal laws, New Jersey law prohibits employers in the state from engaging in certain discriminatory employment practices.

This Employment Law Summary provides a high-level overview of New Jersey's fair employment laws and suggests compliance steps for employers.

### LAW AGAINST DISCRIMINATION

New Jersey's Law Against Discrimination (LAD) prohibits a variety of entities, including **all employers with one or more employees** in the state, from discriminating, harassing or allowing workplace harassment against employees or job applicants based on any of the following protected characteristics:

- Race (including "traits historically associated with race," such as hair texture, hair type and protective hairstyles);
- Color;
- Age (18+);
- Sex (including pregnancy);
- Sexual orientation;
- Gender identity;
- Creed/Religion;
- Marital status;
- Civil union status;
- Domestic partnership status;
- Atypical heredity cellular or blood trait;
- Genetic information;
- Nationality;
- National origin;
- Ancestry;
- Military service;
- AIDS/HIV status; or
- Disability (actual or perceived).

### PROHIBITED ACTS

The LAD prohibits employers from treating an individual differently on the basis of his or her protected characteristic in any employment-related action. These actions include:

- Recruiting;

- Discharging;
- Interviewing;
- Promoting;
- Setting compensation levels; and
- Setting the terms, conditions and privileges of employment.

The LAD also specifically prohibits employers from:

- Publishing any **employment advertisement** that directly or indirectly expresses any limitation, specification, preference or discrimination based on any of the LAD's protected characteristics;
- Discriminating against an employee in compensation or terms or conditions of employment for **displaying the American flag** on the employee's person or workstation, as long as the display does not interfere with the employee's job duties; and
- Denying an otherwise qualified person with a **disability** the opportunity to obtain or maintain employment (or to advance in his or her position) solely because he or she is **accompanied by a service or guide dog**.

## **RESTRICTIONS ON HARASSMENT SETTLEMENTS**

In 2019, New Jersey amended the LAD to further strengthened its protections against discrimination and workplace harassment. Effective March 18, 2019, the amendments restrict the types of provisions an employer may include in an employment contract or settlement agreement, as follows:

- An employment contract (other than a collective bargaining agreement ) may **not**:
  - Waive an individual's substantive or procedural rights or remedies relating to a claim of discrimination, retaliation or harassment under the LAD; or
  - Prospectively waive any rights or remedies under any law; and
- Employment contracts and settlement agreements may **not** include any provisions that have the purpose or effect of concealing the details relating to a claim of discrimination, retaliation or harassment ("nondisclosure provisions").

Under the amendments, a nondisclosure provision in an employment contract or settlement agreement is always void and unenforceable against an employee who is a party to the contract or settlement. If an employer attempts to enforce this type of provision against an employee, the employer may be held liable for the employee's reasonable attorney fees and costs.

A nondisclosure provision may also be unenforceable against an employer under specific circumstances. In fact, the amendments require employers to include a bold, prominently placed notice about these circumstances on any settlement agreement that resolves an employee's discrimination, retaliation, or harassment claim.

This notice must state that, although the parties may have agreed to keep the settlement and underlying facts confidential, this particular agreement may not be enforced against the employer if the employee publicly reveals sufficient details of the claim so that the employer is reasonably identifiable.

The amendments also make it unlawful for an employer to retaliate against an individual because he or she refuses to enter into an agreement or contract that contains a void or unenforceable provision.

However, the amendments specify that employers may still require their employees to enter and sign agreements that prohibit them from:

- Entering into competition with the employer during or after employment; or
- Disclosing proprietary information (which is limited to non-public trade secrets, business plan and customer information).

## **NOTICE REQUIREMENTS**

All employers subject to the LAD must display [an official poster](#) in places easily visible to all employees and applicants.

## **ENFORCEMENT**

New Jersey's LAD is enforced by the [New Jersey Division on Civil Rights](#). An individual must file a complaint within **180 days** of the date of an alleged violation. However, an individual may instead choose to file a lawsuit in the Law Division of the Superior Court of New Jersey **within two years** of an alleged violation.

Effective Jan. 20, 2020, the LAD clarifies that the state's attorney general, the director of the Division on Civil Rights and the commissioner of Labor and Workforce Development also have the right to file a lawsuit against an employer in the Superior Court of New Jersey. If a lawsuit is filed by the attorney general or the director of the Division on Civil Rights, the court may order the noncompliant employer to pay penalties (in addition to imposing other remedies, such as damages payable to victims of unlawful practices and injunctions against future unlawful practices). As an alternative to seeking penalties, the attorney general or director may seek and obtain **punitive damages** payable to the state.

In an any claim or lawsuit under the LAD, penalties that may be imposed against an employer include fines of up to:

- \$10,000 for a first violation;
- \$25,000 for a second violation; and
- \$50,000 for a third or subsequent violation.

As of March 18, 2019, if an individual prevails in a lawsuit alleging a violation of the LAD's new prohibitions against prospective waivers or nondisclosure provisions in employment contracts or settlement agreements, the court must also order the offending employer to pay the individual's reasonable attorney's fees and costs.

Similarly, the amendments that went into effect on Jan. 20, 2020, require the court to order a noncompliant employer to pay reasonable attorney's fees and litigation and investigation costs in any case in which the attorney general or the director of the Division on Civil Rights is the prevailing plaintiff in any LAD lawsuit against the employer.

## CONSCIENTIOUS EMPLOYEE PROTECTION ACT

Also known as the New Jersey Whistleblower Act, the Conscientious Employee Protection Act (CEPA) applies to **all employers** in the state. The CEPA prohibits employers from taking any **retaliatory action** against an employee because the employee does any of the following:

- Discloses, or threatens to disclose, to a supervisor or to a public body an activity, policy or practice of the employer that the employee reasonably believes is in violation of a law;
- Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law by the employer;
- Provides information involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity;
- Provides information regarding any perceived criminal or fraudulent activity, policy or practice of deception or misrepresentation which the employee reasonably believes may defraud any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity; or
- Objects to, or refuses to participate in, any activity, policy or practice which the employee reasonably believes is in violation of a law, fraudulent or criminal or is incompatible with a clear mandate of public policy concerning public health, safety or welfare or protection of the environment.

An employee must first provide written notice of the illegal activity, policy or practice to a supervisor before disclosing it to a public body in order to receive the protection against retaliation provided by the CEPA. In addition, the employee must give the employer a reasonable opportunity to correct the activity, policy or practice.

Disclosure is not required where the employee is reasonably certain that the activity, policy or practice is known to one or more supervisors of the employer. Disclosure is also not required where the employee reasonably fears physical harm as a result of the disclosure provided, if that the situation is emergency in nature.

## NOTICE REQUIREMENTS

Employers must conspicuously display and **annually distribute** to all employees [notices](#) of the protections, obligations, rights and procedures under the CEPA.

## ENFORCEMENT

An employee or former employee may bring a **civil action** against an employer within one year of an alleged violation of the CEPA. In addition to other available remedies, a court may order:

- An injunction to restrain any violation of the CEPA;
- Reinstatement of the employee to the same position held prior to the retaliatory action; and
- Compensation for all lost wages, benefits and other remuneration and attorney's fees.

A court or jury may also assess a civil fine of up to **\$10,000** for an employer's **first violation** and up to **\$20,000 for each subsequent violation**.

## **NEW JERSEY SMOKING LAW**

New Jersey's Smoking Law applies to **all employers** in the state. Under this law, it is illegal for an employer to refuse to hire, discharge or take any adverse employment action against an employee because the employee does or does not smoke or use other tobacco products. However, an employer may lawfully discriminate against a tobacco user if it has a rational basis that is reasonably related to the employment or responsibilities of the employee or prospective employee.

### **ENFORCEMENT**

The [New Jersey Department of Labor and Workforce Development](#) (DLDW) administers and enforces the New Jersey Smoking Law. The DLDW may impose civil penalties of up to **\$2,000 for a first offense** and up to **\$5,000 for each subsequent offense**. In addition, individuals may file lawsuits in court within one year of an alleged violation. In these lawsuits, a court may order injunctive relief, compensatory and consequential damages and reasonable attorneys' fees and costs.

## **NEW JERSEY EQUAL PAY ACT**

Virtually **all employers** in New Jersey are subject the state's Equal Pay Act (NJEPA). The NJEPA prohibits employers from discriminating in any way in the rate or method of payment of wages to any employee based on his or her sex.

A differential in pay between employees that is based on a reasonable factor or factors other than sex is not considered discrimination within the meaning of the NJEPA.

### **ENFORCEMENT**

The NJEPA is enforced by the Commissioner of the DLDW. The Commissioner has the power to enter any employer's place of employment in order to inspect and copy payrolls and other employment records and to obtain other information necessary to the administration and enforcement of the NJEPA.

### **NOTICE REQUIREMENTS**

Employers with **50 or more employees** in the state must conspicuously post a [notice](#) about the NJEPA in a place that is accessible to all workers. This notice must explain that employees have the right to be free of gender inequity or bias in pay, compensation, benefits or other terms or conditions of employment.

Employers must also provide each employee with a **written copy of the notification** upon hire and again annually, on or before **Dec. 31** of each year. The notification must contain an acknowledgement that the employee has received, has read and understands the terms of the notification.

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