NEW JERSEY'S HISTORIC EQUAL PAY ACT HAS BEEN SIGNED AND WILL SOON TAKE EFFECT

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U.S. Labor, Employment and Workplace Safety Alert

Today, New Jersey Governor Phil Murphy signed into law the "Diane B. Allen Equal Pay Act" ("Act"). A significant amendment to the New Jersey Law Against Discrimination ("LAD"), the Act will now go into effect on July 1, 2018.

Among other things, the Act bars New Jersey employers from paying employees in a protected class a rate of compensation (including benefits) less than the rate paid to other employees not members of the class for substantially similar work, with regard to skill, effort, and responsibility. Exceptions to this broad prohibition are limited. They include situations where the employer can establish that the differing rate of compensation is made according to a seniority or merit system. An exception is also available if the employer can show all of the following:

- that the differential is based on at least one legitimate factor other than the characteristics of the protected class, such as training, education or experience, or the quantity or quality of production;
- that this factor(s) is not predicated on and does not perpetuate a difference in compensation based on sex or another characteristic of the protected class;
- that the factor(s) is applied reasonably;
- that the factor(s) accounts for the entire compensation differential; and
- that the factor(s) is job-related vis-à-vis the position at issue and based on business necessity, which will not apply if it is shown that alternative business practices exist that would serve the same business purpose without creating the disparity in compensation.

Comparisons of compensation rates are to be based on rates across all of the employer's operations or facilities, not just the particular employee's geographic location. Employers may not remedy any unlawful discrepancy in compensation by lowering the rate of more highly compensated comparator employee(s).

In addition to these provisions on unlawful employment discrimination, the Act expands protected activity to include an employee's discussion with or disclosure to a lawyer to seek legal advice or government agency information about the job title, job category, or compensation of the employee or any other company employee, past or present. Employers likewise may not require employees or prospective employees as a condition of employment to waive their rights to such disclosures or agree not to make them.

Persons subjected to discrimination in compensation may potentially recover back pay for the entire period the violation has been occurring, up to six years, as well as any other relief for which LAD already provides. Notably, triple the amount of any monetary damages are mandated against an employer that a jury finds guilty of

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breaching provisions of the Act related to nondiscrimination and nonretaliation.

For public works contracts in New Jersey, the Act adds new types of information that must be reported to the Commissioner of Labor and Workforce Development, including as to compensation, hours, and ethnicity. The Commissioner is tasked with revising the reporting form, which public works employers must use.

New Jersey employers should familiarize themselves with the Act. They should carefully review and assess for compliance their compensation polices and practices as well as employees' compensation packages across work functions at all locations.

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