New Jersey Employers May Not Retaliate Against Employees Who Request Certain Information from Other Employees

Revised July 2021

In 2013 and 2018 respectively, Governors Christie and Murphy signed into law two bills[1] that amended the New Jersey Law Against Discrimination (NJLAD) to now make it illegal for an employer to retaliate against an employee who requests from, discusses with, or discloses to any other current or former employee of the employer, a lawyer from whom the employee seeks legal advice, or a government agency information regarding the compensation (including benefits); job titles; occupational categories; and the ethnicity, gender, military status, national origin, or race of the employee or other current or former employees.

This employer prohibition applies regardless of whether a request was responded to. Employees are not required to disclose such information about themselves to any current or former employees or to any authorized representative of those employees.

In addition, an employer cannot require, as a condition of employment, that an employee or prospective employee sign a waiver, or require such an employee to agree, not to make those requests or disclosures.

The NJLAD, enacted in 1945, is the oldest, multipurpose antidiscrimination law in the United States. It prohibits discrimination and harassment based on affectional or sexual orientation; age (18 and older); ancestry, nationality, or national origin; atypical hereditary cellular or blood trait, disability, genetic information, or refusal to submit to a

[1] Governor Christie signed into law *L. 2013, c. 154*. The sole purpose of this law was to add new subsection "r." to section 11 of the New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10:5-12(r), which is the subject of this article.

Governor Murphy signed into law *L. 2018, c. 9*. This law amended the NJLAD to add the Diane B. Allen Equal Pay Act, which included a provision revising N.J.S.A. 10:5-12(r). For a general discussion of the 2018 law, see Pro Bono Partnership's *New Jersey's Diane B. Allen Equal Pay Act*.

Note that sections of the NJLAD unrelated to the discussion in this article have been amended since the 2018 law was enacted. Thus, do not rely on the text of the linked 2013 and 2018 law for purposes unrelated to the discussion in this article.

genetic test or make available the results of a genetic test; breastfeeding, gender identity or expression, pregnancy, or sex; civil union, domestic partnership, or marital status; color or race; creed or religion; or liability for service in the Armed Forces of the United States.

Employers should note that other laws might provide similar protections to employees in other circumstances. For example, the National Labor Relations Board (NLRB) has held that it is illegal under the National Labor Relations Act (NLRA) for an employer—whether unionized or not—to (1) discipline employees for discussing their wages, benefits, and other terms and conditions of employment, or (2) establish workplace policies that prohibit such discussions.[2] As explained in the Pro Bono Partnership's article *Nonunion Employees Are Protected by the National Labor Relations Act*, the NLRA doctrine of "protected concerted activity" applies to all employees, including nonunion employees of nonprofits.

Questions

If you have any questions about the topics covered in this article, feel free to contact Christine Michelle Duffy, Esq. or the Pro Bono Partnership lawyer with whom you usually work, at (973) 240-6955.

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[2] The NLRB applied this principle in *Taylor Made Transportation Services and Kimberly Tutt*, 358 NLRB 427, 193 LRRM (BNA) 1073 (2012), which is at https://apps.nlrb.gov/link/document.aspx/09031d4580a58a03.