

Labor and Employment Laws in the State of New Jersey



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This booklet is intended to provide an overview of the most important parts of New Jersey employment laws. It is not intended to be legal advice for any specific situation or set of facts. Whenever you are dealing with any employment related situation it is always a good idea to seek the advice of competent legal counsel.

I. INTRODUCTION

This publication discusses the most significant New Jersey laws regulating the employment arena. Some of the areas of labor and employment law discussed herein are governed exclusively by federal law and other areas are covered by supplemental (or overlapping) state laws. In circumstance where both state and federal laws apply, state regulations typically offer either the same or greater protections to employees than federal law.

This booklet provides a basic overview of the employment laws in effect in New Jersey. This booklet is not meant to be an exhaustive treatment of New Jersey employment law in any particular area. Rather, this book will provide a basic reference guide to help employers quickly and successfully address common employment issues under New Jersey law. No booklet can serve as a substitute for legal counsel. You should consult an attorney at Fisher & Phillips or other competent labor and employment counsel for legal advice concerning any specific situation.

II. THE EMPLOYMENT RELATIONSHIP

A. Employment Contracts

As with contracts in the non-employment context, an express, negotiated contract for employment between an employer and an individual will be binding on both parties. These contracts can be written or oral and must be sufficiently definite in its terms that the performances to be rendered by each party can be reasonably ascertained. Unlike other jurisdictions, oral contracts of employment for durations longer than one year are enforceable under the Statute of Frauds. N.J. Stat. Ann. §25:1-5.

Formal or written contracts are typically only used for professional employees, managers, and other highly skilled or highly compensated workers, and in situations involving unusual job duties. A written contract can be a complicated document and if it is poorly drafted it can have potentially undesirable consequences. Employers should consult with a lawyer rather than trying to write their own contracts.

Employees sometimes allege that their offer letters are binding contracts of employment. Generally, New Jersey courts reject this argument and reiterate the principles of employment at-will. Accordingly, an employment contract is not created solely by the inclusion of salary and benefit terms. Employers can further protect themselves by including in bold-faced type a statement that employment is at-will and can be terminated at any time with or without cause, unless the employee is covered by a collective bargaining agreement or law that provides otherwise.

B. Employment At Will

1. Generally

In New Jersey, the Supreme Court has held that every employment relationship is presumed to be “at will.” This means that both the employment relationship is for no specific length of time, and the employer or the employee can terminate the employment relationship at

any time, for any reason, or for no reason at all, so long as the reason is not otherwise against the public policy or state or federal law.

2. Limits To The At-Will Status

Even “at-will” employees possess certain protections against discharge. For instance, an employee may not be discharged for any legally prohibited reason, such as race, color, creed, age, sex (including pregnancy), affectional or sexual orientation, national origin, ancestry, marital status, domestic partnership or civil union status, gender identity or expression, atypical hereditary cellular or blood trait, AIDS or HIV status, genetic information, liability for military service, religion, mental or physical disability, perceived disability, the fact that an employee engages in legally protected conduct, or any other protected status in accordance with the requirements of federal, state, and local laws (see Section VI on Employment Discrimination).

An employee may not be discharged in retaliation for exercising a legal right, for performing a legal duty, for reporting illegal or fraudulent activity or for objecting to or refusing to participate in activity that is illegal, fraudulent, criminal, or incompatible with a clear mandate of public policy concerning public health, safety, or welfare or protection of the environment. Furthermore, employers may be subject to further limits on the permissible grounds for dismissal by a collective bargaining agreement or other implied contract.

“At-will” employees can also sue their employer for abusive or wrongful discharge if the employer violated “public policy.” These wrongful discharge or “Pierce” claims, may derive from sources including the United States and New Jersey Constitutions; federal and state laws and administrative rules, regulations, and decisions; the common law and specific judicial decisions; and in certain cases, professional codes of ethics. Additionally, discharge in retaliation for an employee’s exercise of free speech has also been recognized as supporting a Pierce action.

3. Implied Contract Of Employment – Employer Handbooks And Disclaimers

Although employment is presumably “at will” in New Jersey and terminable by either party at any time, for any reason, the New Jersey Supreme Court recognized that an implied promise in a company handbook that an employee will be terminated only for cause may be enforceable against the company, even though the employee would otherwise be considered at will. A court will examine the “reasonable expectations” of the employees to determine whether an employee could expect a termination policy in a handbook or manual to create an enforceable promise of job security.

Employers should also be mindful of utilizing “probationary periods,” as these destroy the at-will status of an employee following completion of the “probationary period.” You may avoid creating an implied contract by inserting an effective disclaimer in a prominent location in the handbook or manual (known as a “Woolley disclaimer”). The disclaimer must be an “effective” disclaimer, meaning that it is clear and does not use confusing legalese. The disclaimer should state that the individual’s employment is terminable at will by either party, with or without cause, and without prior notice. It should also state the policies and benefits

described in the handbook are not a promise and can be changed by the employer without the agreement of employees.

The disclaimer should be printed on one of the first pages of the handbook or manual in capital letters, large font, and bold or underlined print. Finally, the disclaimer should be set apart from the general paragraphs of the handbook or manual to have a greater chance of effectiveness.

C. Labor Organizations/Labor Relations

1. Private-Sector Employers, *N.J. Stat. Ann. Const. Art. I, ¶19; N.J. Stat. Ann. §34:13A-1, et seq.*

Labor relations in the private sector are primarily regulated by the federal National Labor Relations Act (NLRA), which is enforced by the National Labor Relations Board (NLRB). The NLRA allows groups of employees to elect a labor organization to negotiate their wages and working conditions. While employers may express their opposition to unionization, they may not discriminate against employees because of their union activity or past membership. If a union wins an NLRB election, the employer must negotiate in good faith with the union. If the parties negotiate a collective bargaining agreement, the agreement is a fully enforceable contract. More information about the NLRA is available in separate Fisher & Phillips booklets.

There is no similar comprehensive state law addressing private-sector labor relationships in New Jersey, although the New Jersey Constitution provides private-sector employees with the right to organize and bargain collectively, and the New Jersey Employer-Employee Relations Act, N.J. Stat. Ann. §34:13A-1, et seq., provides certain rights to employers and employees in the situations where the employer/employee relationship falls outside of the scope of the NLRA or the NLRB declines to assert its jurisdiction over the controversy. New Jersey Courts generally will look to the NLRA and any interpretations of it when determining the rights and remedies available under the New Jersey Constitution in the instances where the NLRA is inapplicable or the NLRB has declined jurisdiction.

Unions are permitted to make union membership or payment of union dues a condition of employment, either before or after hire in New Jersey. Inclusion of such a closed-shop clause does not render a contract unlawful per se. Employees have a right under federal and state law to engage in lawful, nonviolent picketing. But state courts in New Jersey have held that secondary picketing is unlawful. Secondary picketing is picketing of an entity not engaged in the labor dispute that does business or has trading connections with an employer who is involved in a labor dispute with employees.

Employers are prohibited from requiring an applicant for employment to sign anything that renounces membership in a union or promises not to join a union at any future time as a condition of employment. N.J. Stat. Ann. §34:12-2. Such contracts are referred to as “yellow dog contracts” and are prohibited under both federal and New Jersey law. Also, employers are prohibited from importing from outside New Jersey or transporting within New Jersey any person employed or becoming employed for the purpose of: 1) interfering by force, violence, or threats or coercing or intimidating individuals lawfully picketing or engaged in other lawful activities in support of a strike; 2) coercing or intimidating or threatening by force, violence, or threats the right of employees to join, form, or assist a labor organization, or to engage in

collective bargaining; or 3) replacing any employees who are lawfully on strike or have been locked out. N.J. Stat. Ann. §§34:13C-1, -2, -4.

2. Public-Sector Employers, *N.J. Stat. Ann. §34:13A-1, et seq.*

In the public sector, the New Jersey Employer-Employee Relations Act, *N.J. Stat. Ann. §34:13A-5.3*, essentially grants public-sector employees the same rights to join a union and enter collective bargaining as private-sector employees under the NLRA and the New Jersey Constitution.

D. Background Screening

1. Criminal-Background Checks And Inquiries, *N.J. Stat. Ann. §34:6B-11 to 34:6B-19*

Employers generally may consider prior criminal convictions in making employment decisions. Employers may obtain criminal-conviction records from the State Bureau of Identification and use the information to determine an individual's qualifications for employment. N.J. Admin. Code §§13:59-1.1 to 13:59-2.4.

But, the Opportunity to Compete Act, N.J. Stat. Ann. §§34:6B-11 to 34:6B-19, effective March 1, 2015, New Jersey's ban-the-box statute, generally prohibits employers from inquiring about a job applicant's criminal record until after the initial job interview. Employers are also prohibited from publishing advertisements seeking employment applications that explicitly state the employer will not consider any applicant who has been arrested or convicted of one or more crimes or offenses. There are exceptions to these prohibitions for positions in law enforcement, corrections, the judiciary, homeland security, emergency management, and other areas where a criminal-history background check is required by law, rule, or regulation.

For example, New Jersey law requires background checks to be performed in the following instances:

- independent contractors placing people in positions affecting public safety or national security at state-registered hazardous substances facilities. *N.J. Stat. Ann. § Appx. A:9-79 to A:9-83*;
- public and private agencies providing services to the mentally ill and developmentally disabled. *N.J. Stat. Ann. §30:6D-63 to 30:6D-64*.
- home health care agencies using healthcare workers, nurse aides, and personal-care assistants requiring state certification. *N.J. Stat. Ann. §§45:11-24.3 to 24.5 and 26:2H-83 to 85*;
- child-care centers. *N.J. Stat. Ann. §§30:5B-6.11, 30:5B-6.13 and 30:4C-27.16 to 27.25*;
- adoption agencies. *N.J. Stat. Ann. §§9:3-40.2 to 9:3-40.10*;
- public and private schools for all positions with regular contact with students. *N.J. Stat. Ann. §§18A:6-4.13 to 4.17 and 18A:6-7.1*;
- school bus drivers. *N.J. Stat. Ann. §§18A:6-7.1c, 18A:39-18 to 18A:39-20*;
- licensed private-detective agencies. *N.J. Stat. Ann. §45:19-16*;

- alternative treatment centers seeking a license to sell medical marijuana. *N.J. Stat. Ann.* §24:6I-7;
- international labor matching or matchmaking organizations. *N.J. Stat. Ann.* §56:8-186; and
- operators or drivers of an auto-cab in a municipality. *N.J. Stat. Ann.* §§48:16-3.

2. Credit History And Consumer-Credit Reports, *N.J. Stat. Ann.* §§56:11-28 to 11-43

Credit checks of job applicants are generally allowed for pre-employment screening, through the federal Fair Credit Reporting Act (FCRA). Certain regulations of the Equal Employment Opportunity Commission (EEOC) limit the scope and use of such checks. An employer must get the specific written authorization of the applicant before requesting any credit or background check. More information about the FCRA and background checks is available in Fisher & Phillips' FCRA booklet.

Under the New Jersey Fair Credit Reporting Act (NJFCRA), an employer may use consumer reports and investigative consumer reports for pre-employment purposes. Before obtaining a consumer report, you must first provide the applicant with a clear and conspicuous written notice that a consumer report may be obtained and obtain the applicant's written authorization to obtain the consumer report. The employer must receive written consent from the applicant before making the request for the report.

If the employer wishes to obtain an investigative consumer report, the applicant must first receive a clear written notice of 1) the description of the information generally included in such a report; 2) the precise nature and scope of the investigation, and 3) the applicant's right to request and receive a copy of the report. An investigative consumer report is a consumer report containing information on a person's character, general reputation, personal characteristics, or mode of living, and is typically obtained through personal interviews with neighbors, friends, or other associates.

Employers should provide applicants with an authorization form for their signature that is printed on a separate page by itself, and not one where a request for authorization is merely included as an item on a more general application. Before taking adverse action based in part on a credit or background report, you must provide a copy of the report to the employee along with a written notice describing the applicant's rights under both the FCRA and the NJFCRA.

3. Drug And Alcohol Testing

Federal law requires employers in most transportation industries to conduct both pre- and post-employment decision testing for drug and alcohol abuse among employees performing a safety-sensitive function. Drug and alcohol testing is legal, but not required for other employers.

New Jersey has no statute covering the issue of drug testing private-sector employees or applicants for employment. New Jersey courts have permitted the use of pre-employment drug testing and decided that a private-sector employer may refuse to hire an applicant because of a positive pre-employment drug test. Also, New Jersey courts have allowed drug testing of current employees but in narrower circumstances than for pre-employment tests. Random drug testing

of employees must be limited to employees in safety-sensitive positions or highly regulated industries. The New Jersey Supreme Court advised employers to formulate and implement measures designed to minimize the intrusiveness of a random drug-testing process and recommended certain measures be implemented when performing random drug testing on current employees.

Although the federal Americans with Disabilities Act (ADA) treats prior drug or alcohol addiction as a disability, it expressly allows testing of applicants for current drug abuse and does not require employers to accommodate current drug or alcohol abuse. New Jersey law considers alcoholism and other drug addictions to be handicaps. As such, under New Jersey law, past drug addiction is a protected disability while current illegal drug use is not. If pre-employment drug tests are used, they should be used on all applicants. This will forestall a later claim that members of a protected group were singled out for testing.

4. Drug Testing And Unemployment Benefits; *N.J. Admin. Code §12:17-10.9*

The New Jersey Department of Labor and Workforce Development has certain requirements that must be met before a former employee can be denied unemployment insurance benefits based on a termination related to substance abuse testing results. An employee will be disqualified from receiving unemployment benefits because of misconduct when the employee fails or refuses to take a drug test and is terminated as a result. Failing or refusing to take a drug test is considered misconduct when the employer requires a drug-free workplace or drug testing is a prerequisite of employment and an employer has a written drug test policy that had been conveyed to its employees.

5. Pre-Employment Medical Exams

Under both the ADA and New Jersey law, an employer cannot require applicants to take a medical examination before extending an offer of employment. Moreover, New Jersey law prohibits employers from making any inquiries that would reveal an applicant's disability or health condition prior to extending an offer. *N.J. Admin. Code §13:13-2.3*.

New Jersey law also prohibits employers from requiring a post-offer examination unless the examination is part of the standard hiring process used for all newly hired employees. *N.J. Admin. Code §13:13-2.3*. You cannot use the results of any post-offer medical examination to disqualify an applicant unless any medical condition discovered would, even with reasonable accommodations, prevent the safe or adequate performance of the position's essential functions. *N.J. Admin. Code §13:13-2.8*.

Employers wishing to use pre-employment medical or psychiatric examinations in New Jersey must: 1) apply them uniformly to all applicants regardless of disability; 2) perform them after all other forms of evaluation are concluded and after an offer of employment has been made; 3) make the results available to the applicant upon request; and 4) be prepared to make reasonable accommodations where appropriate. Records of the examination should be maintained as a separate, confidential record, apart from regular personnel records.

When an applicant can perform all the essential functions of the job safely and efficiently with or without reasonable accommodation an employer may not refuse to hire based on the applicant's disability. Remember that failing a medical examination does not automatically disqualify a person from employment. If the medical condition that caused this person to fail the examination is a disability, but you can reasonably accommodate that disability, then you cannot revoke the offer of employment.

Furthermore, physical examinations may not be used to disqualify applicants based on physical conditions which merely pose a risk of future injury. You should communicate to the doctor performing the examination the precise nature and demands of the position so that the applicant may be examined in light of the specific job requirements.

Lastly, if the employer requires an employee to submit to a medical exam by a physician of the employer's choice as a condition of employment, the employer must pay for the exam and cannot deduct the cost of any exam from the employee's wages. N.J. Stat. Ann. §34:11-21.

6. Lie Detector Tests, *N.J. Stat. Ann. §2C:40A-1*

Generally, New Jersey law provides that it is a disorderly persons offense for an employer to influence, request, or require an applicant or employee to take a lie detector test as a condition of employment or continued employment. Penalties include imprisonment for up to six months. The only exception to the rule is that a lie detector test may be required if the following circumstances exist:

- the employer is authorized to manufacture, distribute, or dispense controlled dangerous substances under the New Jersey Controlled Dangerous Substances Act (*N.J. Stat. Ann. §24:21-1 to 21-8.1*);
- the applicant would be directly involved in the manufacture, distribution, or dispensing of, or will have access to legally distributed controlled dangerous substances; or
- the test is limited to the work of the applicant and the improper handling, use, or illegal sale of legally distributed controlled dangerous substances for the past five years.

E. Medical Insurance

You are not required to provide life, disability, or health insurance to your employees. If you do provide such coverage, however, state and federal laws regulate such coverage.

1. Continuation Of Coverage

Employers electing to offer group health insurance plans are regulated by state and federal laws that impose certain obligations on them to provide for the continuation of health insurance. COBRA, the federal healthcare continuation law, gives certain former employees, retirees, and their dependents the right to temporarily continue health coverage at group rates. COBRA requires employers having 20 or more employees to allow terminated employees to retain medical coverage at their own cost for 18 months or more, depending on the

circumstances. More information about COBRA is available in a separate Fisher & Phillips booklet.

New Jersey law requires that every small employer (two to 50 full-time (25 hours) employees) who has been issued a health policy or contract in the state must offer continued health coverage to an employee whose employment has been terminated for any reason other than cause and to any employee whose hours were reduced to less than 25 following the effective date of coverage for 18 months or 29 months (disabled). Spouses and dependent children may be eligible for continuation for up to 36 months. *N.J. Stat. Ann.* §17B:27A-27(a)(1).

Additionally all employers in New Jersey must allow an employee who has been continuously insured under the group policy for at least three months prior and whose coverage under a group policy would terminate due to total disability the opportunity to continue coverage for himself and any dependents. *N.J. Stat. Ann.* §17B:27-51.12.

2. Termination Notice Requirements, *N.J. Stat. Ann.* §34:11A-17

Any employer that provides a health benefits plan to its employees must give thirty days written notice before terminating such health plan unless the plan is being terminated because the employer is changing to a new health benefits plan.

F. Hiring Independent Contractors vs. Employees

There is no single, established definition of an “independent contractor” under New Jersey law. Courts have repeatedly held that the “title” of a worker is not dispositive as to their status. Rather, courts use multi-factor tests to determine the level of supervision, direction, and control over the employee. Since the “title” of a worker is not dispositive, the structure of an agreement will not, by itself, transform individuals into independent contractors, if they are truly employees. The same individual could be deemed an employee in one context and an independent contractor in another (e.g., workers’ compensation versus tax). It is important for employers to check each specific law to determine whether an individual should be classified as an employee or an independent contractor.

1. Multi-Factor Tests

Courts may utilize the following factors as stated in New Jersey Model Jury Charge 5.10(I):

- the extent of control which by agreement, the master may exercise over the details of the work;
- whether or not one so employed is engaged in a distinct occupation or business;
- the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
- the skill required in the particular occupation;
- whether the employer or the person doing the work supplies the instrumentalities, tools and the place of work for the person doing the work;
- the length of time of employment;

- the method of payment (hourly vs. salaried);
- whether the work is part of the regular business of the employer;
- whether the parties believe they are in the relationship of employer and employee;
- whether or not the principal is or is not in business; and
- whether the employer deducts social security benefits from the worker's pay.

In certain circumstances, courts utilize the “ABC” Test to determine independent contractor status, so named because of the statute from which it is derived, *N.J. Stat. Ann.* §43:21-19(i)(6)(A)(B)(C). For example, the Construction Industry Independent Contractor Act (CIICA), New Jersey's Unemployment and Temporary Disability Insurance Law, the New Jersey Wage Payment Law, and New Jersey's Wage and Hour laws, all utilize the following test:

- a. the worker has been and will continue to be free from control or direction over the performance of the service;
- b. the service is either outside the usual course of the business for which the service is performed, or the service is performed outside of all the places of business of the employer for which the service is performed; and
- c. the worker is customarily engaged in an independently established trade, occupation, profession or business.

See N.J. Stat. Ann. §43:21-19(i)(6)(A)(B)(C); *N.J. Stat. Ann.* §34:20-4; *See N.J. Admin. Code* §12:56-16.

2. Benefits Of Employing Independent Contractors

Independent contractors are not covered by many New Jersey laws and therefore can be cheaper to employ. For instance, independent contractors are not covered by New Jersey's Workers' Compensation Law and are not eligible for benefits. Accordingly, employers do not need to obtain workers' compensation coverage for these individuals. Independent contractors are also not covered under New Jersey's Unemployment Insurance Law, so employers need not pay unemployment insurance taxes (or other payroll taxes) for them.

Employers do not have to pay independent contractors minimum wage, overtime, nor for meal periods, rest breaks, or vacation because they are not covered under New Jersey (nor federal) wage and hour laws. Finally, employers have a smaller risk of being sued under the New Jersey Law Against Discrimination (NJLAD), because independent contractors can only bring claims in limited circumstances. *N.J. Stat. Ann.* §10:5-12(1).

3. Penalties For Misclassification

Employers who misclassify their workers as independent contractors may be subject to civil and criminal penalties. These penalties increase for employers who have committed prior violations and have willfully misclassified their employees. Employers may be required to pay back payroll taxes, interest, penalties, wages, retroactive unemployment insurance contributions, and employee benefits. For instance, under CIICA, employers who fail to pay wages, benefits, or other taxes due to improper classification of employees shall be fined up to \$1,000 and imprisoned up to 90 days. *N.J. Stat. Ann.* §34:20-5.

Similarly, employers who fail to carry workers' compensation insurance can be criminally liable in New Jersey. *N.J. Stat. Ann.* §34:15-79(a). Employers who are subject to investigations by the Division of Wage and Hour for misclassifying employees may also be liable for administrative fees of up to 25 percent of the amount of wages owed. *See N.J. Admin. Code* §§12:55-1.5; 12:56-1.4. Furthermore, employers may also be liable for additional penalties of up to \$500 for each separate offense. *N.J. Admin. Code* §12:55-1:6.

G. Employment Of Minors, *N.J. Stat. Ann.* §34:2-21, et seq.

The federal Fair Labor Standards Act (FLSA) regulates the employment of minors. States may also regulate the employment of minors so long as their protections are at least as stringent as Federal law. In New Jersey, the Child Labor Law governs minors under the age of 18 in their employment.

1. Certificates Of Employment Generally

Subject to limited exceptions, all employers of minors under the age of 18 must obtain a certificate of employment, keep it on file, and mail a second copy to the Department of Labor. *N.J. Stat. Ann.* §34:2-21.7. Certificates may be obtained by the designated individual in the school district where the minor resides. *N.J. Stat. Ann.* §34:2-21.7. Employers may obtain “regular” certificates which allow a minor to be employed during regular school times or a “vacation” certificate which permits the minor to work during vacation times and when school is not otherwise in session. Failing to produce the employment certificate for inspection, is *prima facie* evidence that the minor is unlawfully employed. *N.J. Stat. Ann.* §34:2-21.14. The certificate must be returned to the issuing authority within two days after the minor’s employment is terminated. *N.J. Stat. Ann.* §34:2-21.14.

2. Minors Under 18 Years Of Age, *N.J. Stat. Ann.* §34:2-21.17

Minors under 18 years of age may not work for more than five continuous hours without a 30-minute lunch break. In addition, they may not be employed in “hazardous occupations.” and cannot generally be employed in businesses where alcohol is served. But, minors can be employed in theatrical productions, restaurants, and other limited establishments provided that the minor is not involved in the preparation, sale, or serving of the alcohol. Minors must be closely supervised while they are clearing alcoholic beverages.

3. Minors 16 And Under, *N.J. Stat. Ann.* §34:2-21.2 and §34:2-21.17

In addition to the above restrictions, additional restrictions apply to minors 16 and under. A special permit is required for professional employment in theatrical productions. *N.J. Stat. Ann.* §34:2-21.2.

4. Hour Limitations For Minors, *N.J. Stat. Ann.* §34:2-21.3

Minors under 18 may not work more than six days in one week, more than 40 hours in one week, or more than eight hours in day. Minors 16 and under may not work before 7 a.m., after 7 p.m., and may not work more than three hours in a day, when school is in session. However, minors under the age of 16 employed during the summertime in a restaurant,

supermarket, other retail establishment (or other occupation not prohibited under the law) may work until 9 p.m., if they have secured written permission from their parent or legal guardian. Minors may be employed in a concert or theatrical performance up to 11:30 p.m. Additionally, the hourly limitations on minors does not apply to minors over the age of 16 (but below 18) that are employed during June through September at a summer camp or other nonprofit or religious association.

5. Penalties, *N.J. Stat. Ann.* §34:2-21.19

The U.S. Labor Department (DOL) enforces the federal child labor laws. The New Jersey Department of Labor and Workforce Development enforces New Jersey's child labor laws. The department may assess a separate penalty for each employee found to be the subject of a violation each day during which a violation continues to exist. Penalties are harsher for employers who act knowingly and can include criminal charges of the fourth degree (possible imprisonment up to 18 months).

Even if you do not knowingly violate the statute, you can still be convicted of a disorderly persons offense and fined up to \$2,000 for a first violation and \$4,000 for subsequent violations. Additionally, the Commissioner may assess an administrative penalty of up to \$500 for a first violation, \$1,000 for a second violation, and up to \$2,500 for a third violation. Before a violation is imposed, employers have the opportunity to request a hearing before the Office of Administrative Law, within 15 days of receipt of receipt of the notice of violation. N.J. Admin. Code §12:58-5.4.

H. Employee Monitoring In The Workplace

Employees have general rights of privacy in the workplace under common law and public policy. In determining an employee's rights to privacy, courts will balance the individual's right to privacy against the competing public interests. The common law recognizes a tort of unreasonable intrusion on seclusion and one who intentionally does so is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.

1. Searches

The New Jersey Supreme Court has not expressly held that employees of private employers have a privacy interest in their offices, lockers, desks or personal effects brought into the workplace. Any potential expectation of privacy is minimized when an employer clearly communicates that it may search such items in its handbooks and any orientation materials. We advise limiting your searches to health, safety, theft, and security issues.

2. Email And Internet Monitoring

Similar to office searches, the New Jersey Supreme Court has also not spoken to the extent that employers in New Jersey can track and monitor their employees' Internet and email usage. However, in one case, the Appellate Division has prohibited an employer from investigating and reviewing private communications from an employee to her attorney, simply because the employee was utilizing a work computer. The court balanced the company's right to

create and obtain enforcement of reasonable rules for conduct in the workplace against the public policies underlying the attorney-client privilege.

You may discipline employees for engaging in personal matters on work time in violation of company policy, without reviewing the content of the personal messages. Of course, if the employee is engaging in illegal or dangerous activity, you would have a much stronger argument (and indeed a duty) to monitor the employee's activity and even to report the employee to the police.

Employers can increase the likelihood that their search will be considered legitimate, if they expressly communicate their policies to their employees and outline that email and Internet use must be restricted to business purposes only. Employers should also have a clearly defined and uniform policy that states that all emails created on company computers including those with password protection are company property – even if they may be restricted in the types of emails they can ultimately monitor.

I. Recording Of Conversations

New Jersey is a one-party consent state. It is not unlawful for an employee to surreptitiously record conversations or meetings in the workplace when the employee is a party to the conversation. *N.J. Stat. Ann.* §§ 2A:156A-3, -4. An employer can adopt a policy prohibiting employees from surreptitiously recording conversations.

III. JOB REFERENCES

Job references from one employer to another concerning a former employee may lead to a common-law action for negligent misrepresentation, defamation, or post-employment retaliation. An employer may be liable for negligent misrepresentation of a former employee's work history if it relies upon incorrect information to support an adverse employment action (i.e., failure to hire) against the former employee.

Employers may also be subject to claims of defamation depending on the nature of the information that they disclose, and if the employer knowingly or recklessly provides false information that defames the former employee. For these reasons, prudent employers should either refuse to provide references to the prospective or new employers of former employees, or should establish concrete policies concerning how they will provide post-employment references and limit their response (e.g., solely confirming dates of employment or that employee was, in fact, employed).

Healthcare employers are subject to mandatory requirements to disclose job performance, as it relates to patient care and notices to the Division of Consumer Affairs concerning the employee. *N.J. Stat. Ann.* §26:2H-12.26.

IV. WAGES AND HOURS

A. Wage Payment Provisions

1. Minimum Wage, *N.J. Stat. Ann. §34:11-56a4; N.J. Admin. Code §12:56-3.1*

The current minimum wage in New Jersey is \$8.38 per hour as of January 1, 2015. Employers in New Jersey must pay the greater minimum wage rate of either New Jersey law or the federal Fair Labor Standards Act.

2. Covered Employers, *N.J. Stat. Ann. §34:11-56a4; N.J. Admin. Code §12:56-3.2*

Unless specifically exempted from coverage, all employers are covered. The following employees are exempted from coverage of the minimum wage law:

- full-time students employed by the college or university at which they are enrolled and at not less than 85 percent of the effective minimum wage rate;
- outside sales persons;
- sales persons of motor vehicles;
- part time employees primarily engaged in the care and tending of children in the home of the employer;
- minors under 18 years of age except as provided in *N.J. Admin. Code §12:56-11* (employment in first processing of farm products occupations), *12:56-13* (hotel and motel occupations), *12:56-14* (food service occupations), and *N.J. Admin. Code §12:57* (wage orders for minors employed in mercantile occupations, beauty culture occupations, and laundry, cleaning and dyeing occupations);
- those employed in a volunteer capacity and receiving only incidental benefits at a county or other agricultural fair by a nonprofit or religious corporation or a nonprofit or religious association which conducts or participates in that fair; and
- those working at summer camps, conferences and retreats operated by any nonprofit or religious corporation or association during the months of June, July, August and September.

3. Handicapped Employees, *N.J. Admin. Code §12:56-9.1*

Employees whose productive capacity is impaired by physical or mental deficiency, or injury may be paid below the minimum wage to reflect the reduced capacity, provided the employer obtains a special license authorizing employment at the lower rate and only for the time period provided in the license. Application for the special licenses is made on the prescribed forms and to the Office of Wage and Hour Compliance. Special blanket certificates may be given under certain conditions for subminimum wages for disabled employees in sheltered workshops or departments of a sheltered workshop.

4. Interns And Trainees, *N.J. Admin. Code §12:56-18.2*

Certain interns and trainees are not considered employees and therefore not subject to minimum wage and overtime requirements if they work for their own advantage on the premises of another, without any express or implied compensation agreement. Often, the arrangement is one in which a student intern earns high school or college credit in exchange for participating in a training program conducted by the employer, WH Publication 1297, issued by the U.S. Department of Labor.

New Jersey Department of Labor and Workforce Development regulations define school-to-work program requirements that permit non-paid activities by student learners. The following conditions must be met to allow for nonpaid activities of student learners at for profit and not-for-profit organizations:

- the student must be at least 16 years of age;
- the activity must be related to a formal school-to-work transition plan for a student learner;
- there is collaboration and planning between worksite staff and school staff resulting in clearly identified learning objectives related to the non-paid activities;
- any productive work is incidental to achieving learning objectives;
- the student learner receives credit for time spent at the worksite and the student is expected to achieve the learning objectives;
- the student learner is supervised by a school official and a workplace mentor;
- the nonpaid activity is of a limited duration, related to an educational purpose and there is no guarantee or expectation that the activity will result in employment; and
- the student learner does not replace an employee.

5. Volunteers

Persons who donate their time and effort, usually on a part-time basis, for public service, religious, or humanitarian objectives, and who do so without expectation of payment, are not considered employees of the organizations receiving their services. Similarly, members of religious orders who serve their faith through institutions operated by the church or religious organization are not considered employees of these institutions and need not be paid.

In order for an employee to qualify as a volunteer, these four criteria must be met:

- the work must be at the volunteer's initiative;
- the work must be outside normal or regular work hours;
- the volunteer must be performing a religious, charitable or other community service without contemplation of payment; and
- the volunteer must be performing a task outside of the regular job functions performed for the same employer.

6. Overtime, N.J. Stat. Ann. §34:11-56a4

The payment of overtime is required by both federal and New Jersey laws. The laws require most employers to pay overtime at the rate of 1½ times the regular hourly wages for all hours worked over 40 in the workweek. New Jersey law does not require private-sector employers to pay overtime for time worked in excess of eight hours in any single workday. There is also no requirement in the private sector for employers to pay overtime for time spent working on weekends, holidays, or other days of rest, unless that time is in the excess of 40 hours worked in a workweek, or a contract or policy of the employer grants premium pay for work performed on weekends, or holidays, etc.

The regular rate is not just the stated hourly rate (or other forms of compensation, such as salary, reduced to an hourly basis). Rather, it includes all forms of remuneration paid to or on behalf of an employee, except the following:

- gifts that are not dependent on hours worked, production, or efficiency;
- payments for travel or other business expense reimbursements and not made as compensation to the employee;
- payment of additional premium compensation for hours worked in excess of eight hours in a day or worked on a weekend, holiday, or other day of rest;
- discretionary bonuses;
- payments made pursuant to a bona fide profit sharing plan;
- payments made pursuant to a bona fide plan providing for retirement, insurance, or similar fringe benefits; or
- pay for time off such as vacation pay, holiday pay, sick pay, or jury duty pay; and
- overtime premiums. *N.J. Admin. Code §12:56-6.6.*

A workweek is defined as a period of seven consecutive days (168 hours) from the time the employer has determined the workweek to begin, which need not be the same as the calendar week unless the employer so chooses. The beginning and ending of the workweek may be changed if the change is intended to be permanent and is not intended to deprive an employee of overtime. *N.J. Admin. Code §12:56-5.4.*

An action for overtime or premium pay must be commenced within two years. *N.J. Stat. Ann. §34:11-56a25.1.*

7. Exempt And Nonexempt Employees, N.J. Stat. Ann. §34:11-56a4

New Jersey and federal law requires that nonexempt employees must be paid time and one-half their regular pay for all hours actually worked in excess of 40 in a seven-day workweek. Nonexempt employees are those workers, hourly and salaried, not specifically exempt from being paid overtime.

Bona fide executive, administrative, professional and outside sales employees are exempt from the overtime requirements. New Jersey follows the DOL definitions of these terms (see 29 CFR Part 541) with two exceptions. Government employees are not covered by the New Jersey definition and the definition of “administrative” includes employees whose primary duties consist of sales activities and who receive at least 50 percent of their compensation from

commissions and a total compensation of not less than \$400 per week. *N.J. Admin. Code §12:56.7.2. N.J. Admin. Code §12:56.7.2.*

Employees must be paid a salary to be exempt. But paying an employee a salary, does not guarantee that he or she is exempt. Nonexempt employees may be either salaried or hourly. What determines whether employees are classified as exempt or nonexempt is what the employees actually do in their job, not their job title, method of payment, or the amount they are paid. For example, executives, professionals, and administrators are exempt if they are paid a guaranteed weekly salary of no less than 2,080 hours times the current minimum wage per week (\$455 per week) and whose primary duties are exempt. Primary duties are defined as the principal, main, major, or most important duties the employee performs.

Examples of nonexempt work include manual or production work, routine data entry, clerical or recordkeeping duties, maintenance, and cleaning work. Typical examples of exempt work include physicians, pharmacists, lawyers, engineers, teachers, and those performing non-manual duties related to management policy or business operations. Exempt work tends to be more creative or original in character and of the type on which the results depend primarily on the skill and independent judgment of the employee. (For a more in-depth analysis of current federal exemptions, see the Fisher & Phillips booklet *FLSA - Exemptions and Recordkeeping*.)

CAUTION: Misclassification of salaried employees as exempt creates liability for unpaid overtime. It is the employer's burden to prove exempt status of employees. See the WH Publication 1281 from the U.S. Dept. of Labor.

8. Paying Employees, *N.J. Stat. Ann. §34:11-4.1, et seq.*

a. Employers Covered, *N.J. Stat. Ann. §34:11-4.1*

New Jersey's wage payment provisions apply to all private-sector employers.

b. Frequency And Method Of Payment, *N.J. Stat. Ann. §§34:11-4.1, 34:11-4.2, N.J. Admin. Code §12:55-2.4*

In New Jersey, employers must pay the full amount of wages owed to their employees at least twice during the calendar month and on regular pay days designated in advance. Each regular pay day must be no more than 10 working days after the end of the pay period being paid. Bona fide executives, supervisory, and other special classifications of employee can be paid less frequently, provided that they are paid in full at least once every month on a regularly established schedule.

If a regularly scheduled payday falls on a non-work day, you must pay employees their wages on the immediately preceding work day. Employers must notify each new employee of the pay rate and what day is the regularly scheduled pay day at the time of hiring. You also must notify employees of any changes to the pay rates or regularly scheduled pay date before the changes take effect. We recommend written notice of changes.

For each pay period, employers must provide each employee a statement of deductions made under *N.J. Stat. Ann. §34:11-4.4*. All wages must be paid either by cash, negotiable

instruments redeemable for the face value in U.S. currency, checks drawn on banks with which arrangements have been made to allow employees to cash the checks without difficulty and for the full amount, or direct deposit. An employer must obtain the consent of the employee for direct deposit of wages, which the employee may withdraw at any time.

c. Enforcement, *N.J. Stat. Ann.* §§34:11-58; 34:11-59

The New Jersey Department of Labor Wage Collection Division has authority to investigate violations that do not exceed \$30,000 as well as impose penalties and fees on employers and enforce the law generally with respect to wage payment and collection. An employee may also institute a civil action for any alleged unpaid wages.

It is a disorderly persons offense, carrying possible imprisonment up to six months, to fail to pay wages when due, or to fail to pay compensation or benefits within 30 days. Any corporate officer or employee responsible for the violation commits a disorderly persons offense. *N.J. Stat. Ann.* §2C:40A-2.

d. Payment On Termination of Employment, *N.J. Stat. Ann.* §§34:11-4.5, 34:11-43

For purposes of wage payment and payment on termination, “wages” includes vacation, holiday, and sick leave payments due to an employee under any policy or employment contract. New Jersey law does not mandate the payment of unused vacation, holiday, or sick leave, absent a written policy or contract. Funds placed in pension or profit-sharing plans are not considered wages.

Upon discharge or suspension, you must pay employees all wages due by the next regular payday, which must be within 10 working days of the end of the payperiod. Employees paid in whole or part by commission or other incentive plan must be paid a reasonable approximation of the wages due until the exact amount can be determined. Employers have an additional 10 days to pay employees’ wages when the reason for the cessation of employment is due to a labor dispute that includes employees who process the payroll.

If an employee dies, an employer may pay all wages owed to the deceased employee to, in order of preference: 1) a surviving spouse; 2) any children 18 years of age and over in equal shares, or to the guardian of children under 18 years of age; 3) the father and mother or survivor; 4) any sisters and brothers; 5) or to the person who pays the funeral expenses. An employer does not need actual notice of the pendency of probate proceedings or letters testamentary or of administration before distributing the deceased employee’s wages to the above parties.

9. Wage Deductions

a. Permissible Withholding, *N.J. Stat. Ann.* §34:11-4.4, *N.J. Admin. Code* §12:55-2.1 and 12:55-2.2

As a general rule, deductions from wages or final compensation are prohibited unless required or permitted by law. Wages means compensation for services rendered, where the amount is determined on a time, task, piece or commission basis. Supplementary incentives and

bonuses calculated independently of regular wages are not considered “wages” for this purpose. Under New Jersey law, employers may only deduct for the following purposes from employee wages:

- deductions required by law such as taxes or garnishments;
- contributions to an employee welfare, insurance, health insurance, retirement plan, profit-sharing plan, or IRA for the employee and/or spouse which are made pursuant to a collective bargaining agreement or with the written consent of the employee;
- contributions for payment into company-operated thrift plans; or to buy certain securities, and which are made pursuant to a collective bargaining agreement or with the written consent of the employee;
- payments authorized by employees for payment into employee personal-savings accounts;
- payments for company products purchased or payments for employer loans to employees if made in accordance with a periodic payment schedule contained in the original purchase or loan agreement;
- payments for safety equipment;
- payments to correct payroll errors;
- payments for costs and fees for the replacement of employee identification, which is used to allow employees access to sterile or secured areas of airports, in accordance with a fee schedule described in any airline media plan approved by the federal Transportation Security Administration;
- payments for the purchase of U. S. Government bonds;
- contributions for organized and generally recognized charities authorized by the employee;
- payments for the rental of work clothing or uniforms or for the laundering or dry cleaning of work clothing or uniforms, authorized by the employee or collective bargaining agreement;
- payment of labor organization dues, fees, and other labor organization charges permitted by law;
- contributions to a political committee, continuing political committee, or both made for the purpose of making contributions to aid or promote the nomination, election or defeat of any candidate for a public office of the State or of a county, municipality or school district or the passage or defeat of any public question, subject to certain legal conditions. If the political committee is established by the employee’s labor union, the requirement that payments be made to the union-organized committee may be subject to a collective bargaining agreement. If the committee is not established by the employee’s labor union, the employer can require the committee to bear the administrative expenses incurred by the employer. Employees must authorize the contribution in writing;
- payments for employer-sponsored programs for the purchase of insurance contributions to nonunion annuities on a group or individual basis, if otherwise permitted by law;
- payments for health club membership fees or childcare services authorized in writing by employees, or under a collective bargaining agreement;

- payments for mass-transit commuter tickets authorized in writing by employees, or under a collective bargaining agreement;
- payments for actual cost of employer-provided transportation to a worksite or authorized in writing by employees, or under a collective bargaining agreement.

Deductions must be recorded in the employer's books and records.

b. Garnishment, *N.J. Stat. Ann. §2A:17-50, et seq.*

Garnishments involve a court proceeding regarding the nonpayment of a debt in which a court instructs the employer to withhold the proper amount from the employee's pay and send it directly to the creditor. Employers should notify an employee of any withholding. If the employee disputes the creditor's right to the garnish, the only recourse for the employee is with the court. The employer has no choice but to obey a court's garnishment instruction; failure to follow all of the court's requirements or instructions could result in employer liability for the debt.

In New Jersey, wage garnishments must comply with both the federal Consumer Credit Protection Act (CCPA) and New Jersey State law. When state and federal law conflict with each other, the law providing for the "more limited garnishment" must be observed. 15 U.S.C. § 1677. Every employer, public and private, after receipt of a wage garnishment must withhold from every pay check the prescribed amount – in New Jersey a) 10% of the gross weekly pay if pay is \$217.50 or more; or b) 25% of disposable earnings for that week; or c) the amount, if any, by which the employee's disposable weekly earnings exceed \$217.50 per week until the total amount due has been deducted or the complete termination of employment has occurred. In no event may more than 10% of gross salary be withheld and only one execution against wages may be satisfied at a time. Gratuities that are given directly to the employee by a customer are not wages for purposes of calculating wages subject to a garnishment.

You are required to turn over the monies being withheld from the employee's wages to either the sheriff or other court office that served the wage garnishment on the employer. Employers must begin withholding income on the next regularly scheduled pay period following service of an order and make payment to the sheriff's officer or court officer within 10 days of the pay period. Failure to comply with a wage order may result in an employer being held liable for the unpaid amount of the judgment. *N.J. Stat. Ann. §2A:17-54.*

An employer who discharges or disciplines an employee because wages have been garnished commits a disorderly persons offense punishable by up to six months imprisonment and may be required to compensate the employee for any damages and reinstate any terminated employee. *N.J. Stat. Ann. §2C:40A-3.*

If you receive an order from a court of another state in which your company operates (has a legal presence), you should obey the court order regardless of where the employee resides. If you do not operate in the other state you should only follow the court order if it involves child or spousal support. Otherwise, the instruction should be returned to the issuing court with an explanation of why the company will not honor the wage garnishment or deduction order.

c. Child And Spousal Support

When a New Jersey Family Court issues an order for child or spousal support, a notice must be included in the order advising that the order may be enforced by a garnishment. The Probation Division may initiate income withholding without any further court action if the employee obligor is in arrears on payments for an amount of support equaling 14 days, for good cause, or if the employee obligor voluntarily submits to a garnishment. Should a garnishment be entered, every employer must thereafter withhold from every paycheck the prescribed amount until either the employer receives a written formal release or the employee is no longer receiving income from the employer.

Remember, too, that employers in New Jersey are required to honor child and spousal support withholding orders from other states regardless of whether the employer operates or has any legal presence in the other state.

B. Work Hours

1. Hours Actually Worked, *N.J. Admin. Code §12:56-5.1, et seq.*

The term “hours worked” refers to the total time an employee is required to work, to be at the employer’s place of work, or to be “on duty.” This includes, for example, employees attending mandatory offsite or after hours job training classes. In addition, an employer must pay for all actual time worked, including time when the employee was not required to work, such as when an employer merely permits employees to come to work early or stay late.

New Jersey law requires that if an employee reports for duty on any day, the employee must be paid for at least an hour of time. The only exception to this requirement is that an employee showing up for work does not need to be paid if the employer made available to the employee the minimum number of hours of work agreed upon by the employer and employee prior to the commencement of work on the day involved.

You may establish certain policies to limit the time your employee is allowed to work by prohibiting employees from starting or continuing to work before or after a certain time, or by prohibiting overtime work without prior approval of a supervisor. But violations of such a policy should always be dealt with as disciplinary matters and not by refusing to pay for time actually worked.

New Jersey law does not impose a limit on the number of hours an employee may be required to work either in a day or a workweek. New Jersey’s only limit on mandatory overtime is that certain employees in a healthcare facility cannot be made to work over 40 hours in a week. Except in limited circumstances, employees of healthcare facilities involved in direct patient care activities or clinical services and who receive an hourly wage, excluding physicians, are prohibited from being required to work over 40 hours in a week. N.J. Stat. Ann. §34:11-56a31, et seq. Such an employee may agree to work more than 40 hours in a week, but an adverse employment action cannot be taken against any employee that refuses to agree to work over 40 hours in a week.

The time an employee spends “on call” is generally not considered work time. But when overly restrictive limitations are placed on employees “on call” it may necessitate counting this time as hours worked. Examples of such limitations include requiring a reporting time of less than 20 minutes or restricting an employee to one location (even the employee’s home).

Any time spent working while traveling is also included in hours worked. Time spent traveling between places of work is considered time worked, though normal commuting time between work and home is not. In instances where an employee is asked to travel either to another city or to another location in the same city and return home the same day, all travel time, less the employee’s normal commute, is considered hours worked. Where an overnight stay in another city is involved, travel during normal working hours, no matter the day of the week, is counted as hours worked, while travel occurring after normal working hours is not.

2. Recordkeeping Requirements; 26 CFR § 516, et seq.; 29 CFR §785.48(b); N.J. Stat. Ann. §34:11-56a20; N.J. Admin. Code §12:56-4.1, et seq.

Employers are required to keep records demonstrating compliance with the law in paying all nonexempt employees for time worked. The following information must be kept for all employees (exempt and nonexempt): name and identification number; home address, including zip code; date of birth (if under 19); sex; occupation; time and day when employee’s workweek begins and other information concerning the payment of wages.

In New Jersey, employers must also maintain records of the employee’s total hours worked each day and each work week, wages paid including both gross wage rate and net hourly rate, a list of the itemized deductions and additions made, the basis on which the wages are paid, the regular rate of pay and an explanation of any payments not included, total regular pay, and total overtime pay. State law does not require a record of hours worked by outside salesmen, buyers of poultry, eggs, cream, or milk in their raw state, homeworkers, or bona fide executive, administrative, or professional employees.

Employers of employees that receive gratuities must also maintain records reflecting the total gratuities received each week by each employee during a workweek. You may claim a credit for food and lodging supplied to an employee in lieu of cash payment, but you must maintain records demonstrating the cost of furnishing food or lodgings provided.

While the format of such records is generally left up to the employer, all records must be kept for a period of six years, depending on the type of record either at the place of employment or at a centralized record-storing facility. The records should be easily accessible to employees or state officials and if stored centrally offsite should be available to the place of employment within 72 hours upon notification.

Note that because New Jersey law places the burden on the employer to properly maintain accurate records demonstrating compliance, if the employer’s records show inconsistencies with regard to time worked and wages paid, the state may either question their accuracy or presume the employer to have not paid the proper amounts. If the employer fails to provide proper records, the records of the employee will be considered accurate.

Finally, note that you may use rounding in your records of time worked provided three requirements are met: 1) the rounding increments do not exceed 15 minutes; 2) the practice or policy is posted and understood by employees; and 3) the effect is that employees are fully and accurately paid for the time actually worked.

3. Meal And Break Periods

Except for minors (see Section II.G.2.above), there is no requirement under either federal or New Jersey law to provide employees with breaks or a lunch period. Allowing employees to eat at their work stations can lead to having this count as compensable time if the meal period is subject to frequent or significant (more than two or three minutes) interruptions. Break periods of 20 minutes or less are always compensable.

4. Jury Duty Or Court Attendance, 28 U.S.C. §1875; N.J. Stat. Ann. §2B:20.17

Federal law protects an employee from being discharged, intimidated, or coerced by a employer because of grand or petit jury service. New Jersey law prohibits an employer from penalizing an employee because the employee serves as a juror. Penalties for a violation of this statute include the possibility of a criminal charge, as a disorderly persons offense, and a possible civil action for monetary damages and for reinstatement of employment.

While an employer may choose to pay employees for juror service, there is no statutory requirement that a private employer pay an employee's salary during juror service. Full time employees of the State of New Jersey are entitled to their usual compensation during jury service in lieu of their payment for juror service.

V. LEAVE LAWS

A. Family And Medical Leave

The Family and Medical Leave Act (FMLA) and New Jersey Family Leave Act (NJFLA) provide eligible employees the opportunity to take unpaid, job-protected leave for certain specified reasons. The maximum amount of FMLA leave an employee may use is either 12 or 26 weeks within a 12-month period depending on the reasons for the leave. The maximum amount of NJFLA leave is 24 weeks within a 24-month period.

More information about the FMLA, including military-related FMLA, is available in a separate Fisher & Phillips booklet.

An employer is subject to the FMLA if it has 50 or more employees within a 75 mile radius for at least 20 workweeks in the current or preceding calendar year. An employer is subject to the NJFLA if it employs 50 or more employees, whether employed in New Jersey or not, for each working day during each of 20 or more calendar workweeks in the then current or immediately preceding calendar year.

To be eligible for NJFLA leave, an employee must have worked at least 12 months for the employer and at least 1,000 hours over the preceding 12 months. This includes regular and overtime hours, military leave, and paid workers' compensation leave. Highly paid employees

(top 7% or 5%) may be denied leave, with proper notice, if the denial is necessary to prevent economic harm that would adversely and substantially impact the employer's operations.

NJFLA leave may be taken for the birth of a child, or to care for a newborn child; placement of a child with the employee for adoption; to care for an immediate family member (employee's spouse, child, or parent) with a serious health condition; or to care for a seriously ill civil union partner or parent-in-law.

The maximum amount of NJFLA leave that may be taken is 12 weeks in a 24 month period. Multiple family members are eligible for leave at the same time without limitation. NJFLA and FMLA will run concurrently when the leave is covered by both laws. Absence due to an employee's own serious health condition does not qualify for leave under the NJFLA, so a disability absence may be counted only against an employee's FMLA entitlement. In some situations, an employee may use 12 weeks of FMLA for personal illness and an additional 12 weeks of NJLA to care for a family member or bond with a newborn child. The New Jersey Division on Civil Rights' NJFLA Regulations prohibit employers from automatically "starting the clock" on a mother's NJFLA bonding leave when the baby is born. An employer must wait until she is released from disability, unless FMLA is exhausted earlier. *N.J. Adm. Code 13:14-1.6*.

Employers may measure the 24-month period under the NJFLA under the same method that it uses for FMLA (i.e., calendar year, any fixed 12-month "leave year," or a "rolling" 12-month period measured backward or forward).

Eligible employees may take NJFLA leave in a single block of time starting within 12 months of the birth or placement for birth of a child, to care for a newborn child, or for placement of a child for adoption. Intermittent or reduced leave is not permitted unless the employer consents. Leave to care for a family member with a serious health condition may be taken in a single block of time or on a reduced leave schedule (in increments of not less than one workday, unless otherwise agreed with the employer). When medically necessary for a family member's serious health condition, employees may take NJFLA leave intermittently in one week increments over a 12 month period.

B. Emergency Responders, *N.J. Stat. Ann. §40A:14-213*

An employee who serves as a volunteer firefighter, a county or municipal volunteer for Office of Emergency Management who responds to fire or emergency calls, or as part of a volunteer first aid, rescue, or emergency squad must receive unpaid leave for missing work due to responding to a qualified emergency. A qualified emergency includes responding to a state of emergency declared by the President of the United States or Governor of this State, or being actively engaged in responding to an emergency alarm.

Employees must notify the company at least one hour prior to their scheduled shift that they are responding to an emergency and will be absent from work. Upon return, an employee must provide a copy of the incident report and certification by the incident commander or other official confirming that the employee was actively engaged and necessary for the emergency

response. The report should include the date and time the volunteer was relieved of emergency service duties.

If an employee will miss two or more consecutive days of work due to emergency volunteer service, the employee must notify the company each day in advance of the shift.

Employees must be permitted to use accrued, but unused vacation in lieu of unpaid leave, if the employee chooses to do so. Essential employees may be denied leave as permitted by law.

C. Military Leave, *N.J. Stat. Ann. §38:23C-20*

The federal Uniformed Services Employment and Reemployment Rights Act (USERRA) applies to all employers. The federal law prohibits employment discrimination due to an individual's military service. Employers must grant all employees time off work for military duty and, upon discharge, an employer must return the employee to his or her prior position or one of "like seniority, status and pay."

More information about USERRA can be found in the Fisher & Phillips USERRA booklet.

The New Jersey Soldiers and Sailors Act provides similar protections.

D. Paid Family Leave

Employees may receive up to six weeks of Family Leave Insurance benefits from the State of New Jersey (NJFLI):

- to bond with a child during the first 12 months after the child's birth if the covered individual or domestic partner of the covered individual, is a biological parent of the child or within the first 12 months after the placement of the child for adoption with the covered individual; or
- to care for a family member with a serious health condition supported by a certification provided by a health care provider.

Claims may be filed for six consecutive weeks, for intermittent weeks or for 42 intermittent days during a 12 month period beginning with the first date of the claim.

The employer may require employees to use up to two weeks of accrued paid leave in lieu of the NJFLI Benefit. An employee's job is not protected while the employee is receiving NJFLI Benefits.

New Jersey requires employees to provide the employer with advance notice of need for leave, as follows:

- at least 30 days in advance of the beginning date of leave to bond with a newborn or newly adopted child, unless the time of the leave is unforeseeable or the time of the leave changes for unforeseeable reasons.

- in a reasonable and practicable manner for leave to care for a seriously ill family member on a continuous, non-intermittent basis, unless an emergency or other unforeseen circumstance precludes prior notice.
- a minimum of 15 days notice prior to leave to care for a seriously ill family member on an intermittent basis unless an emergency or other unforeseen circumstance precludes prior notice.

E. NJ SAFE Act Leave, *N.J. Stat. Ann. §34:11C-1 through §34:11C-5*

The New Jersey Security and Financial Empowerment Act (SAFE Act) applies to employers with 25 or more employees and provides for 20 days of unpaid leave in a 12-month period. The SAFE Act does not specify whether the 25 employees must work in New Jersey. Based upon the interpretation of a similar provision of the New Jersey Family Leave Act (NJFLA), it seems likely that as long as an employer has a total of 25 employees working anywhere, even one New Jersey employee would be eligible for SAFE Act leave.

Employees who have been employed for at least 12 months by their employer, and have worked at least 1,000 hours during the immediately preceding 12 months, are eligible for NJ SAFE Act leave. An employee can take leave if the employee, or the employee's family member, including a child, parent, spouse, domestic partner, or civil union partner, has been the victim of domestic violence or a sexually violent offense, including homicide, assault, terroristic threats, kidnapping, criminal restraint, false imprisonment, sexual assault, criminal sexual contact, lewdness, criminal mischief, burglary, criminal trespass, harassment, stalking, and attempts to commit sexually violent crimes.

An employee may use SAFE Act leave for the employee or the employee's family member to seek medical attention or counseling for, or recover from, injuries; to obtain services from a victim services organization; to participate in safety planning, relocation, or other safety measures; or to seek legal assistance or remedies or attend, participate in, or prepare for a criminal or civil court proceeding.

The employee may elect or the employer may require the employee to use accrued vacation, sick or medical, or personal leave during all or part of the 20 days of permitted leave. The SAFE Act permits the employer to count the leave against the employee's entitlement under the SAFE Act, the New Jersey Family Leave Act, and the federal Family and Medical Leave Act simultaneously.

Employees must provide advance written notice of their need for leave, "as far in advance as is reasonable and practical under the circumstances." An employer may require documentation.

An employer must maintain, "in the strictest confidence," any documentation that an employee provides in support of a SAFE Act leave request or the fact that an employee failed to return to work from a SAFE Act leave. However, disclosure is permitted when required by a

federal or state law, rule or regulation, or if the employee voluntarily authorizes disclosure in writing.

The SAFE Act prohibits employers from discharging, discriminating or retaliating against, or harassing an employee, or threatening to do so, because the employee requested or used SAFE Act leave, or refused to authorize the release of confidential information. These protections apply to all terms, conditions, or privileges of employment, including compensation.

An employee may sue a present or former employer for violation of the SAFE Act in the Superior Court of New Jersey. If the employee prevails, a court may award the employee lost wages, benefits, and other remuneration; damages for emotional distress; pain and suffering; punitive damages; and costs and attorneys' fees. A court may also assess a civil fine of between \$1,000 and \$2,000 for the first violation, and up to \$5,000 for subsequent violations, payable to the employee; and may also issue an injunction against further violations, and order reinstatement of the employee.

F. Temporary Disability Insurance

Employees who are unable to work because of a nonwork-related accident or illness for a period in excess of seven days, are eligible for New Jersey State Temporary Disability Benefits (TDB) for up to the maximum period set forth in New Jersey law, 26 weeks. A covered employer may establish a private plan for the payment of disability benefits in lieu of the benefits of the State plan.

G. Paid Sick Leave

A growing number of municipalities in the state are requiring employers to provide mandatory paid sick leave and state-wide legislation is pending.

VI. EMPLOYMENT DISCRIMINATION, *N.J. STAT. ANN. §10:5-1, ET SEQ.*

A. Overview

Title VII of the federal Civil Rights Act of 1964, which covers employers with 15 or more employees, prohibits discrimination on the basis of race, color, religion, gender and national origin as well as retaliation against employees who oppose unlawful discrimination or participate in Title VII proceedings. Title VII allows employees to sue for back wages, reinstatement or front pay, and attorneys' fees. Employees may also recover compensatory and punitive damages, the combined amount of which may range up to \$300,000 (depending on the size of the employer).

More information about Title VII is available in a separate Fisher & Phillips booklet.

Further, the Civil Rights Act of 1866 (Section 1981) prohibits racial discrimination in the making and enforcement of contracts. It covers employees as well as persons who enter any type of contract, such as independent contractors. Because it applies to all persons, employers with less than 15 employees are subject to Section 1981.

The New Jersey Law Against Discrimination (NJLAD) prohibits harassment and discrimination in the workplace based on an array of protected characteristics regardless of the size of the employer. Under the NJLAD, employers in New Jersey may be liable for practices that discriminate against a legally protected class. In general, employers should be prepared to

explain their reasoning whenever a member of a protected class is terminated, not hired, does not receive or is not considered for promotion, is recalled from a layoff or strike in any order other than seniority, or is compensated differently than other employees of substantially equal skill, responsibility, or experience.

Moreover, an employer may not retaliate against any person because that individual opposed an act or practice forbidden under the New Jersey Law Against Discrimination or because an individual has filed a complaint, testified, or assisted in any proceeding arising under the act. The anti-retaliation protections apply to all individuals and entities including former employees.

Specifically, the NJLAD prohibits discrimination, including based on any of the following characteristics:

- age – 18 years of age or older including discrimination against younger workers;
- ancestry;
- atypical hereditary cellular or blood trait;
- service in the U.S. armed forces;
- color;
- creed;
- disability or handicap, including being perceived as having a disability;
- gender identity or expression;
- genetic information, including refusal to provide or participate in testing;
- marital, civil union, or domestic partner status;
- national origin;
- nationality;
- pregnancy;
- race both of the employee and individuals affiliated with the employee;
- sex, including pregnancy; and
- sexual orientation.

Even within classes protected by Title VII and the NJLAD there are some defenses to discrimination due to the specific requirements or qualifications of a particular job. Bona fide occupational qualifications (BFOQs) are one example. A BFOQ may exist such as when a job requires a driver's license or where a female attendant is needed for a women's locker room. Note, however, that height and weight restrictions normally do not qualify as a BFOQ and race never does. Because BFOQs represent instances where the law permits otherwise impermissible discrimination, the law construes BFOQs narrowly and requires proof that such restrictions are in fact job-related and necessary.

Federal antidiscrimination laws also make harassment and stereotyping based upon a protected characteristic unlawful employment practices. To hold an employer liable for harassment, employees must show that they experienced unwelcome conduct or communications of a sexual, racial, religious (etc.) nature or because of a protected characteristic that was serious enough to affect a term, condition, or privilege of employment. An employee must show that the employer is responsible for the treatment, either by demonstrating the harassment involved a tangible employment action or created a hostile work environment.

A tangible employment action is a significant change in employment status (e.g., termination, failure to promote, reassignment). An example would be when a supervisor forces an employee to submit to unwelcome sexual advances in exchange for continued employment or favorable employment decisions. A hostile work environment is actionable if other employees, not necessarily supervisors, engage in conduct that has the purpose or effect of unreasonably interfering with the employee's work performance or creates an intimidating, hostile, or offensive work environment.

The NJLAD also prohibits harassment based upon a protected category including harassment of women by men, men by women, men by men, women by women, and stereotyping. The NJLAD prohibits both tangible employment action harassment and hostile work environment harassment. Under the NJLAD, the definition of supervisor is very broad and includes anyone "placed in charge of the [employee's] daily work activities." However, neutral harassment, even if it includes discussing sexual, gender, racial, ageist, etc. related topics, is not discrimination under the NJLAD.

To bring a claim of discrimination under the New Jersey Law Against Discrimination, an individual may file a charge directly with the New Jersey Division on Civil Rights (DCR) or file a lawsuit in the Superior Court of New Jersey. There is no requirement that an employee first file with the DCR within 180 days of the alleged unlawful employment discrimination. The statute of limitations under the NJLAD is two years.

There is individual liability for superiors who aid and abet the discriminatory actions of the employer. In some circumstances, a failure to act can create individual liability under the NJLAD.

B. Race And Color

Title VII of the Civil Rights Act prohibits discrimination, including harassment, based on race and color. Under Title VII you may not discriminate against an employee or applicant because of race, race-linked characteristics, or assumptions about a racial group. Title VII prohibits discrimination against all races, not just minorities, and includes not only intentional racial discrimination, but also workplace policies or practices that have a disproportional effect on a certain race or color, if the policies are not job-related, and are not a necessity for the business. Additional protection is provided by Section 1981 which prohibits racial discrimination in the making or enforcing of contracts.

The NJLAD prohibits employers from harassing or discriminating against an employee based on race or color. The same prohibitions included under Title VII apply under state law. Under both state and federal law "reverse discrimination" is prohibited. Under state law, an employee seeking to prove "reverse discrimination" must demonstrate that the employer is the "unusual employer who discriminated against the majority."

C. Creed

The NJLAD prohibits discrimination and harassment based on an employee's or applicant's religious beliefs or observances or lack of any such beliefs. However, the NJLAD does not prohibit a religious organization from making religious affiliation or following the

tenets of the religion a qualification for clergy, religious teachers and other employees engaged in religious activities of the organization. “Creed” refers to only the religious beliefs of an individual and not the individual’s political convictions. Like Title VII, the NJLAD requires employers to reasonably accommodate an employee’s religious beliefs.

D. National Origin And Ancestry

Title VII of the Civil Rights Act prohibits discrimination based on national origin discrimination. Other statutes including Section 1981 of the 1991 Civil Rights Act and the Immigration Reform and Contract Act of 1986 provide additional protections for employees. Title VII’s prohibition on national origin discrimination makes unlawful discrimination based on ancestry, not discrimination based on alienage or an individual’s country of citizenship. This means that the federal act’s prohibition refers to discrimination based on the country from which an employee or his/her forebears come from.

The NJLAD prohibits harassment and discrimination against employees or applicants based on their national origin and/or ancestry. Workplace rules requiring English only to be spoken have been held by New Jersey courts to not be illegal or discriminatory by themselves and are permissible unless an employee can show they are a surrogate for discrimination.

E. Nationality

Title VII’s prohibition on national origin discrimination does not forbid discrimination on the grounds of citizenship or nationality.

The NJLAD specifically forbids discrimination based on national origin and nationality and is therefore broader in its protections than federal law. While the state laws do not distinguish between national origin and nationality discrimination, New Jersey courts have interpreted nationality discrimination to refer to discrimination based on an individual’s citizenship. Discrimination against American citizens can give rise to a cause of action under the act. Also the NJLAD does not prevent distinctions between alien and citizen required by federal law.

F. Marital, Domestic Partner, And Civil Union Status

The federal anti-discrimination laws do not directly cover discrimination based on marital status. The NJLAD prohibits an employer from discriminating against an employee based on marital status. In particular, an employer may not discriminate based on marital status in the compensation, appointment, assignment, promotion, transfer, dismissal, or other matters pertaining to employment. Courts have interpreted the state law to prohibit discrimination in employment decisions based on whether an individual is married, single, or divorced. The NJLAD, however, does not prohibit the maintenance and enforcement of anti-nepotism rules.

G. Affectional Or Sexual-Orientation, And Gender Identity Or Expression

Federal antidiscrimination statutes do not cover discrimination based on sexual orientation status, gender identity or expression. On July 21, 2014, President Obama signed

Executive Order 13672 extending workplace protections on the bases of sexual orientation and gender identity to federal contractors.

The NJLAD prohibits an employer from discriminating against an employee based on affectional, sexual orientation, and gender identity or expression. The NJLAD defines affectional or sexual orientation to mean “male or female heterosexuality, homosexuality or bisexuality, practice, identity or expression, having a history thereof or being perceived, presumed or identified by others as having such an orientation.”

Gender identity or expression means “having or being perceived as having a gender related identity or expression whether or not stereotypically associated with a person’s assigned sex at birth, including transgender status.” While you can require your employees to adhere to “reasonable workplace appearance, grooming and dress standards”, you must permit an employee “to appear, groom and dress consistent with the employee's gender identity or expression.”

H. Genetic Information Or Refusal To Submit To A Genetic Test

The federal Genetic Information Nondiscrimination Act (GINA), (Pub.L. 110-233) makes it unlawful for employers with more than 15 employees to refuse to hire, or to discharge, any applicant or employee, or otherwise to discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment based on that employee's genetic information.

The definition of "genetic information" is broad and includes information from an individual's own genetic tests, the genetic tests of the individual's family members, or the occurrence of a disease in family members of the individual. GINA also makes it unlawful for employers to request, require, or purchase genetic information about an employee, although, there are some exceptions to this prohibition.

The NJLAD prohibits discrimination based on genetic information. Genetic information is defined under New Jersey state law to mean information about genes, gene products, or inherited characteristics that may derive from an individual or family member.

The NJLAD also prohibits the improper collection, retention, or disclosure of such genetic information and employers cannot make employment decisions based on the genetic information of an employee or applicant and employee’s or applicant’s refusal to submit to a genetic test or otherwise reveal results of such a test. Generally, you may not obtain, retain, or disclose genetic information from an individual or their DNA sample without informed consent.

I. Sex And Pregnancy

It is unlawful to discriminate against current employees or applicants because of sex in any of the terms, conditions, or privileges of employment.

Title VII’s prohibition on sex discrimination includes discrimination on the basis of pregnancy or related health conditions. You may not refuse to hire a woman because she is pregnant if she is qualified and otherwise able to do the job. Pregnant employees must be treated

in the same manner as any other employee. Therefore, if a pregnant employee is temporarily unable to perform her job, she must be accommodated in the same manner as any other temporarily disabled employees.

Both Title VII and the Equal Pay Act of 1963 prohibit discrimination in compensation based on sex. The Equal Pay Act requires that men and women receive equal pay for substantially equal work.

Nothing in the act bars an employee from refusing to accept any individual for employment on the basis of sex in certain circumstances where sex is a bona fide occupational qualification that is reasonably necessary to the normal operation of the particular business or enterprise. These situations are extremely limited.

The NJLAD includes pregnancy discrimination provisions that impose affirmative obligations on employers to provide “reasonable accommodation in the workplace” to pregnant employees, unless the accommodation would be an “undue hardship on the business operations of the employer.” Reasonable accommodation can include permitting bathroom breaks, breaks for increased water intake, periodic rest, assistance with manual labor, job restructuring or modified work schedules, and temporary transfers to less strenuous or hazardous work.

Employers are not permitted to discriminate in the rate or method of wage payment because of an employee’s sex, but it is not discriminatory to have a differential in pay based on a reasonable factor(s) other than sex. Equal Pay Act; *N.J. Stat. Ann.* §34:11-56.2.

J. Service In The Armed Forces Of The United States

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) provides protection for past and present service members. The act provides reemployment benefits, a right to be free from discrimination and retaliation, and a right to continue health plan coverage for up to twelve months. More information about USERRA is available in a separate Fisher & Phillips booklet.

The NJLAD makes it unlawful for an employer to discriminate against an employee or applicant based on their potential service in the Armed Forces of the United States.

K. Age Discrimination

New Jersey employers with 20 or more employees are subject to the federal Age Discrimination in Employment Act (ADEA). Under the ADEA, it is unlawful to discriminate against or discharge an applicant or employee who is 40 years or older or retaliate against an individual for opposing employment practices that discriminate based on age or for participating in any way in an investigation, proceeding, or litigation under the ADEA. More information about the ADEA is available in a separate Fisher & Phillips booklet.

Under the NJLAD, employers with one or more employee may not discriminate against a person over the age of 18 based on age. An employer may be susceptible to an age discrimination claim as long as an employee can show a link between the adverse employment action taken and the employee’s age.

L. Disability

The general rule is that employers should not consider an individual's disability in making employment decisions when the disability itself would not prevent the person from performing the essential functions of the job. Furthermore, an employer may have a duty to provide a reasonable accommodation if that would allow the individual to satisfactorily perform all the essential functions of the job. The Americans with Disabilities Act (ADA) protects applicants and employees with disabilities from discrimination in regards to their employment. The ADA covers employers with 15 or more employees.

Under the ADA, covered employers cannot discriminate against employees or applicants with a qualified disability (or regarded as having a disability) who, with or without reasonable accommodation, can perform the essential functions of the job at issue. Covered employers must also make reasonable accommodation to employees, including modification of facilities and equipment and job restructuring. More information about the ADA is available in a separate Fisher & Phillips booklet.

The NJLAD also prohibits disability discrimination. The NJLAD defines disability as "physical disability, infirmity, malformation or disfigurement caused by bodily injury, birth defect or illness." It also includes any mental, psychological, or developmental disability. AIDS and HIV infection are also expressly included in the definition of disability. N.J. Admin. Code §§13:13-2.3, 2.4, 2.5. The New Jersey Courts broadly interpret the definition of disability to cover even temporary conditions. Under New Jersey law, "[u]nless it can be clearly shown that a person's disability would prevent" an individual from performing a particular job an employer cannot deny employment to such individual if otherwise qualified. This prohibition includes persons perceived or believed to be suffering from disabilities.

Employers must reasonably accommodate an employee's handicap unless doing so would pose an undue burden or if even with the accommodation the employee would be unable to perform the essential functions of the job. The issue of whether an employer has made a reasonable accommodation is decided on a case-by-case basis.

An employer may not use any employment test or selection criteria that screens out or has the effect of screening out individuals with disabilities, unless the test or criteria is job-related and other alternative tests/criteria that do not screen in such a manner are not available.

M. Retaliation

The NJLAD, like many federal statutes including TITLE VII, the ADEA, and the ADA prohibit discrimination or retaliation against a current employee, an applicant for employment, or a former employee because the individual filed a charge, assisted, or participated in any manner in a discrimination suit or investigation, or opposed a discriminatory employment practice.

1. "Participation" Discrimination

You cannot discriminate against a person on the basis of that person's "participation" in a discrimination suit or investigation. This provision has been interpreted broadly and covers not only filing a formal charge, but also expressing an intent to file a charge, private gathering of

non-confidential information for the investigating agency's use in addressing a charge, being a witness for a plaintiff, testifying for a coworker, or refusing to be a cooperative witness for an employer. You also cannot refuse to hire someone because that person filed a discrimination suit against a prior employer.

In these situations, protection is extended even if the employee is wrong on the merits of the charge and even if you consider the contents of the charge defamatory, so long as the words or actions are confined to the context of the discrimination litigation.

2. "Opposition" Discrimination

Sometimes an employee may not actually file a discrimination charge, but may refuse an order, or tell another employee to refuse to do something, based on the belief that the order violates a discrimination statute. In many, but not all, cases, this conduct is also protected. For instance, one employee may tell a coworker that the employer's pregnancy disability policy is illegal under Title VII. That employee may be protected by Title VII's retaliation provision so long as the employee had a "reasonable belief" that the practice in question was illegal.

N. Reprisals For Inquiries Concerning Compensation And Protected Status

The NJLAD prohibits an employer from taking "reprisals" against an employee "for requesting from any other employee or former employee of the employer" certain information concerning "any employee or former employee of the employer," if the information is requested to assist in investigating or suing over potential discrimination in "pay, compensation, bonuses, other compensation, or benefits." Such information includes an employee or former employee's job title; occupational category; rate of compensation; benefits; gender; race; ethnicity; military status; or national origin.

O. Remedies

Employees who prevail are eligible for compensatory damages (back pay, reinstatement or front pay, medical expenses, pain, suffering and humiliation) and/or punitive damages, as well as attorneys' fees and costs. There is no cap or limit on the amount of damages.

P. Display Of American Flag

Under the NJLAD, it is unlawful to discharge or discriminate against an employee for displaying the American flag on the employee's person or work station, as long as the display does not "substantially and materially interfere with the employee's job duties." An employer who violates the law is liable for damages caused by the discharge or discrimination, including punitive damages, and reasonable attorneys' fees. Unlike other NJLAD claims, a court may award costs and reasonable attorneys' fees to the employer if it determines that an employee brought a claim without "substantial justification."

VII. CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA), N.J. STAT. ANN. 34:9-1, ET SEQ.

A. Overview

CEPA is one of the broadest whistleblower statutes in the nation because it applies to a wide range of individuals and entities, including in-house attorneys, government employees, and even independent contractors in some instances. While other statutes also protect employees from retaliation (*e.g.*, the NJLAD, *N.J. Stat. Ann.* §34:6A-45, *N.J. Stat. Ann.* §34:15-39.1), CEPA is broad in that it makes it unlawful for employers to take “retaliatory action” against employees who disclose, object, or refuse to participate in specific acts that the employee reasonably believes are illegal or that violate a rule, regulation, or public policy. The statute reads as follows:

An employer shall not take any retaliatory action against an employee because the employee does any of the following:

- a. Discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer, or another employer, with whom there is a business relationship, that the employee reasonably believes:
 - (1) is in violation of a law, or a rule or regulation promulgated pursuant to law, including any violation 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, or, in the case of an employee who is a licensed or certified health care professional, reasonably believes constitutes improper quality of patient care; or
 - (2) is fraudulent or criminal, including any 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;
- b. Provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation promulgated pursuant to law by the employer, or another employer, with whom there is a business relationship, including any violation 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, or, in the case of an employee who is a licensed or certified health care professional, provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into the quality of patient care; or
- c. Objects to, or refuses to participate in any activity, policy or practice

which the employee reasonably believes:

- (1) is in violation of a law, or a rule or regulation promulgated pursuant to law, including any violation 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, or, if the employee is a licensed or certified health care professional, constitutes improper quality of patient care;
- (2) is fraudulent or criminal, including any 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
- (3) is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment.

N.J. Stat. Ann. §34:19-3(a)(b)(c).

“Retaliatory action” is defined as “the discharge, suspension or demotion of an employee, or other adverse employment action taken against an employee in the terms and conditions of employment.” *N.J. Stat. Ann.* §34:19-2(e).

Even without discharge, suspension, or demotion, a pattern of actions that affect an employee’s terms or conditions of employment can constitute retaliation.

B. Who Is Covered

CEPA prohibits employers from retaliating against employees for engaging in protected activity. “Employers” are defined as “any individual, partnership, association, corporation or any person or group of persons acting directly or indirectly on behalf of or in the interest of an employer with the employer’s consent.” *N.J. Stat. Ann.* §34:19-2(a). Also included within this definition are state and local public entities. *Id.* “Employees” are defined as “any individual who performs services for and under the control and direction of an employer for wages or other remuneration.” *N.J. Stat. Ann.* §34:19-2(b).

But the line is not always clear whether a worker is an independent contractor or an employee as discussed earlier in this booklet. In these circumstances, courts may utilize multi-factor tests to determine how to treat the worker and whether they can avail themselves of CEPA’s protections. Some lower courts have found that there is individual liability under CEPA. The New Jersey Supreme Court has not yet addressed this issue.

C. Protected Activity

Employees who disclose, object, or refuse to participate in specific acts that the employee reasonably believes are illegal or that violate a rule, regulation, or public policy may not be

retaliated against under CEPA. The employee does not need to articulate the precise public policy or statute of the law that he/she is alleging was violated. Rather, as a matter of law, courts will broadly examine federal and state constitutions, statutes, administrative rules and decisions, judicial decisions and professional ethics codes.

It should be noted that employees who seek to invoke CEPA pursuant to *N.J. Stat. Ann.* §34:19-3(a) (making disclosures to a public body), must first provide their supervisor with written notice and provide the employer with “a reasonable opportunity to correct the activity, policy or practice.” *N.J. Stat. Ann.* §34:19-4. If the employees are “reasonably certain” that the supervisors already have knowledge of the CEPA violation, or if the employees “reasonably fear” that they will be physically harmed for their disclosure, the employees are not required to make such disclosure pursuant to *N.J. Stat. Ann.* §34:19-4.

D. Reasonable Belief

In addition to objecting to the violating conduct, the employee must “reasonably believe” that violation of public policy or a violation of the law has occurred. The employee does not actually need to show that a law, public policy, rule or regulation would have been violated, but must set forth facts that would support an objectively reasonable belief that a violation has occurred. A court can make this determination by concluding that there is a substantial nexus between the complained-of conduct and a law or public policy identified by the court or the employee. The purpose of this provision is to protect conscientious employees from employer retaliation while not requiring those same employees to become lawyers themselves.

The New Jersey Supreme Court has expanded CEPA’s reach to coworker conduct as well. Accordingly, employers should take care to properly train and monitor employees to avoid liability caused from an employee’s actions.

E. Procedure

An employee has one year to commence suit in a court of competent jurisdiction for alleged CEPA violations. *N.J. Stat. Ann.* §34:19-5. However, employees may be bound to arbitration if an enforceable agreement so provides.

F. Remedies, *N.J. Stat. Ann.* §34:19-5

Under CEPA, prevailing employees may be entitled to “[a]ll remedies available in common law tort actions.” *N.J. STAT. ANN.* 34:19-5. By statute, the court shall also order the injunctive relief, reinstatement, lost pay and benefits, attorneys’ fees and costs, civil fines and punitive damages. *N.J. Stat. Ann.* §34:19-5; *N.J. STAT. ANN.* 2A:15-5.14(c).

VIII. TORTS

A. Negligent Hire/Negligent Retention

New Jersey law requires employers exercise ordinary care when selecting employees for hire and discharge any employee who poses a danger to others. Claims of negligent hire or retention are often brought by employees claiming sexual or other forms of unlawful harassment. To avoid and defeat such claims, you should:

- require the prospective employee to complete an authorization form that includes consent for driver's license, and criminal-background investigations, and whether the prospective employee has ever been a defendant in a civil action for an intentional tort, including the nature of the intentional tort and the disposition of the action;
- make a reasonable effort to contact references and former employers of the prospective employee concerning the suitability of the prospective employee for employment; and
- interview the prospective employee.

The New Jersey Workers' Compensation Act bars an employee's claims for injuries caused by the negligence of a coworker suffered in the course of employment, which includes claims for negligent hiring and retention suffered in the course of the employee's employment.

B. Defamation

Defamation is a false and malicious communication that is either written or verbal made to a third person that injures the reputation of another or exposes that person to public contempt or ridicule. Defamation claims often arise in the employment context, particularly when negative evaluations or job references are given or internal investigations are conducted.

There are several defenses against a defamation claim, including truth and personal opinion. Also, employers have qualified privileges for certain statements made in connection with the employment of an employee. Employers have a qualified privilege for statements made in good faith in response to the specific inquiries of a prospective employer regarding the qualifications of an employee. Employers also have a qualified privilege for statements made to their employees about the criminal conduct and termination of another employee and the statements made to law enforcement about the criminal conduct of a current or former employee.

C. Misappropriation Of Trade Secrets, *N.J. Stat. Ann. §56:15-1*

New Jersey's Trade Secrets law allows a company to sue former employees, competitors, or other persons and entities who misappropriate the company's trade secrets. Trade secrets are defined as information, without regard to form, including a formula, pattern, business data compilation, program, device, method, technique, design, diagram, drawing, invention, plan, procedure, prototype, or process, that: 1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means, by other persons who can obtain economic value from its disclosure or use; and 2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy and include formulas, programs, devices, methods, techniques, drawings, processes, financial data or plans, product plans, lists of actual or potential customers or suppliers, that are not commonly known by or available to the public.

A person seeking relief under the act may obtain injunctive relief for actual or threatened misappropriation of a trade secret, damages for actual loss and for unjust enrichment, punitive damages, and in the appropriate circumstances, attorneys' fees. A person who misappropriates a trade secret cannot defend the case by arguing that proper means to acquire the trade secret existed at the time of the misappropriation.

The New Jersey Computer Related Offenses Act, *N.J. Stat. Ann.* §2A:38-1, et seq., and the New Jersey Computer Related Theft Law, *N.J. Stat. Ann.* §2C:20-25, provide criminal penalties and authorize civil lawsuits against anyone who uses a computer or computer network to, among other things, steal, delete, or alter data; invade the privacy of another; or commit computer forgery.

D. Intentional Infliction Of Emotional Distress

Many employment-related lawsuits include a claim for intentional infliction of emotional distress (IIED). To prevail on such a claim, the employee must meet the stringent burden of showing intentional, extreme and outrageous conduct that caused severe emotional distress. This elevated threshold is met only in “extreme cases.” Moreover, in the employment setting it is “extremely rare” to find the level of outrageous conduct required to meet the threshold. The distress a person suffers must be so severe that no reasonable person could be expected to endure it. Generally, mere humiliation, embarrassment, or fright are insufficient. The mere discharge of an at-will employee, even if false reasons for the discharge are provided, cannot sustain an IIED claim.

E. Tortious Interference

In New Jersey there two distinct tortious interference causes of action. One is for interference with a prospective economic advantage, which can also be called such things as “intentional interference with prospective economic relations,” “tortious interference with prospective economic benefit,” or “intentional interference with a prospective economic relationship.” Generally both claims require: 1) the existence of a protectable right – a prospective economic or contractual relationship; 2) interference that the defendant engaged in “intentionally” and with “malice”; 3) that the interference caused the loss of the prospective gain; and 4) the interference caused damage.

The contract at issue need not be enforceable to qualify as the protectable right. Rather the right at issue need only be a relationship with “the potential of leading to a profitable contract.” The interference must be committed by a third party – parties cannot interfere with their own contracts. Therefore, an employer cannot interfere with its own contract with its employees.

It remains unclear under New Jersey law whether a supervisor could be liable for interfering with a contract between an employer and another employee. The law in New Jersey appears to be leaning towards the proposition that a supervisor will not constitute the necessary third party unless he or she obtains a personal economic benefit, but no law explicitly provides that a supervisor cannot be liable for interfering with a contract.

IX. THE UNEMPLOYMENT COMPENSATION LAW, *N.J. STAT. ANN.* §43:21-1-24

The New Jersey Unemployment Compensation Law provides for income to workers who lose their job through no fault of their own. A worker may only qualify for unemployment benefits if he/she is an employee. See “ABC” test in Section II.F.1. *supra*. Moreover, the claimant must be able to work, available to work, actively seeking work, and satisfy an earnings requirement. The claimant cannot be working full-time and must file a claim to be eligible for

benefits. In addition, any amounts owed for child support may be deducted from the unemployment benefits. The weekly benefit is 60% of an eligible claimant's average weekly wage, up to a maximum established each year.

Employees cannot waive their rights to unemployment benefits in New Jersey and employers cannot require employees to pay additional deductions to offset the employer's contributions to the controller of the Unemployment Compensation Fund. Employers who violate these provisions are subject to penalties and imprisonment. *N.J. Stat. Ann.* §43:21-15.

X. WORKERS' COMPENSATION, N.J. STAT. ANN. §34:15

The New Jersey Workers' Compensation Law addresses personal injuries to employees arising out of and in the course of employment. New Jersey law requires that all New Jersey employers not covered by Federal programs have workers' compensation coverage or be approved for self-insurance. Even out-of-state employers may need workers' compensation coverage if a contract of employment is entered into in New Jersey or if work is performed in New Jersey.

It is unlawful for any employer (or the employer's agent) to discharge or discriminate against any employee because such employee has claimed or attempted to claim workers' compensation benefits from such employer, or because an employee has testified, or is about to testify, in any proceeding concerning workers' compensation benefits.

Employers who violate the Workers' Compensation Law may be penalized up to \$1,000.00 or imprisoned up to 60 days. *N.J. Stat. Ann.* §34:15-39.1

For additional information, visit the New Jersey Department of Labor Website at: http://lwd.dol.state.nj.us/labor/wc/wc_index.html.

XI. WORKPLACE SAFETY

A. Generally

Employers are required to furnish a reasonably safe workplace and do everything reasonably necessary to protect the life, health, safety and welfare of employees. Employers must warn employees about latent defects in machinery or the work environment. However, employees assume the ordinary risks of employment and must exercise ordinary skill and diligence to protect themselves.

The federal Occupational Safety and Health Act of 1970 (OSHA) establishes employer and employee rights and duties with respect to occupational safety and health. OSHA and its regulations require employers to furnish a workplace free from recognized hazards that cause or are likely to cause serious harm. Additional information about OSHA can be found in a separate Fisher & Phillips booklet.

Like many states, New Jersey adopts the Federal OSHA standards and regulations in full for its private-sector workers. For public-sector workers, New Jersey operates a public sector only occupational safety and health program under a plan approved by the U.S. Department of Labor and administered by the New Jersey Department of Labor and Workforce Development.

With some exceptions, the public-sector program has also adopted all Federal OSHA standards and regulations.

B. Worker Health And Safety Act, *N.J. Stat. Ann. §34:6A-1, et seq.*

Employers are required to provide employees with a workplace that is “reasonably safe and healthful.” This requirement includes a mandate that employers install, maintain, and use protective devices, including methods for sanitation and hygiene. Also, where the nature of the work creates a substantial risk of physical injury, an employer must establish and enforce work methods that are reasonably necessary to promote the health, life, and safety of the employees in light of the nature of the work.

If an accidental death, major fire, or major structural failure occurs at a place of employment, the employer must report it to the Bureau of Engineering and Safety as quickly as possible.

The Commissioner of the Department of Labor and Industry and his agents may enter and inspect a workplace and all of its machinery, equipment, and conditions without notice.

C. Safety Requirements In Mercantile Establishments, *N.J. Stat. Ann. §34:2-31-33*

All hoist ways, hatchways, elevators, and well hole openings on every floor of a mercantile establishment must be protected by good and sufficient trapdoors or self-closing hatches and safety catches or strong guard rails at least three feet high. Furthermore, every mercantile establishment must have a proper and sufficient means of ventilation. Additionally, each establishment must maintain clean, convenient toilet facilities for each sex that are properly screened and ventilated.

D. Smoking And E-Cigarettes

The New Jersey Smoke-Free Air Act, *N.J. Stat. Ann. §25:3D-55 et seq.*, generally prohibits smoking in the workplace. *N.J. Stat. Ann. §26:3D-58(a)*. The Act defines “smoking” to include “the inhaling or exhaling of smoke or vapor from an electronic smoking device.” *N.J. Stat. Ann. §26:3D-57*.

On the other hand, an employer may not refuse to hire, discharge, or otherwise take adverse action against an employee because the individual smokes or uses tobacco products, or chooses not to use such products unless the employer’s reason for doing so is reasonably related to the employment. *N.J. Stat. Ann. §34:6B1-2*.

XII. POSTERS

New Jersey employers are required to display and keep on display certain posters under Federal and state law. The specific posters which are required and how they must be displayed (e.g., size, languages, etc.) may vary. The links are listed below:

Minimum Wage: <http://www.dol.gov/whd/regs/compliance/posters/flsa.htm>

Equal Employment Opportunity: <http://www1.eeoc.gov/employers/poster.cfm>

USERRA: http://www.dol.gov/vets/programs/userra/USERRA_Federal.pdf
OSHA: <http://www.osha.gov/Publications/osha3165.pdf>
Polygraph Protection Act: <http://www.dol.gov/oasam/programs/osdbu/eppac.pdf>
NLRA: <http://www.nlr.gov/poster>
FMLA: <http://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf>
NJ FLA: http://www.nj.gov/oag/dcr/downloads/posters/8x11_flaposter.pdf
NJ Child Labor: http://lwd.dol.state.nj.us/labor/forms_pdfs/lsse/mw-129.pdf
NJ Workers' Compensation: <http://www.njcrib.com/forms/Form%2016%20NJ.pdf>
NJ No Smoking:
http://www.state.nj.us/health/ctcp/smokefree/documents/nj_no_smoking_sign_eng.pdf
NJ Wage & Hour: http://lwd.dol.state.nj.us/labor/forms_pdfs/lsse/mw-220.pdf
NJ Payment of Wages: http://lwd.dol.state.nj.us/labor/forms_pdfs/lsse/mw-17.pdf
NJ UI and TD Benefits:
http://lwd.dol.state.nj.us/labor/forms_pdfs/EmployerPosterPacket/PR-1.pdf
NJ No Discrimination:
http://www.nj.gov/oag/dcr/downloads/posters/8x11_employmentposter.pdf
Public Accommodation:
http://www.nj.gov/oag/dcr/downloads/posters/8x11_pubaccposter.pdf
NJ CEPA: http://lwd.dol.state.nj.us/labor/forms_pdfs/lwdhome/CEPA270.1.pdf
NJ FLI: http://lwd.dol.state.nj.us/labor/forms_pdfs/tdi/fli_poster.pdf
NJ Records: http://lwd.state.nj.us/labor/forms_pdfs/EmployerPosterPacket/MW-400.pdf
NJ SAFE Act: http://lwd.dol.state.nj.us/labor/forms_pdfs/lwdhome/AD-289_9-13.pdf
NJ Gender Equity:
http://lwd.dol.state.nj.us/labor/forms_pdfs/EmployerPosterPacket/genderequityposterenglish.pdf

XIII. NOTICES TO EMPLOYEES

A. New Hires

New Jersey Labor Law and the New Jersey Family Leave Insurance Law require that a copy of the following notices be provided “at the time of the employee’s hiring.” N.J.S.A. 34:1A-1.14(a), 43:21-39.1(g).

NJ FLI: http://lwd.dol.state.nj.us/labor/forms_pdfs/tdi/fli_poster.pdf

NJ Records: http://lwd.state.nj.us/labor/forms_pdfs/EmployerPosterPacket/MW-400.pdf

If you distribute a handbook or leave policies, you must include a description of an employee’s rights under the FMLA and NJFLA. If you do not distribute a handbook or leave policy, you must distribute the following:

FMLA: <http://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf>

NJFLA: <http://www.state.nj.us/lps/dcr/downloads/flafactsheet.pdf>

B. Annual Distribution

In addition to posting the Conscientious Employee Protection Act (CEPA) Notice, employers with 10 or more employees must also “annually distribute” the notice in both English and Spanish, and at its discretion, in any other language spoken by the majority of its employees. The notice must include the individual who has been designated to receive internal complaints. *N.J. Stat. Ann.* §34:19-7. Distribution can be electronic.

C. Employees Requesting Leave

Employers must provide an additional copy of the NJFLI poster to an employee who notifies it that he or she is taking time off to bond with a newborn or newly adopted child or to care for a seriously ill family member, or any time, upon the first request of an employee.

D. Separated Employees (Permanent Or Temporary)

Employers must complete Unemployment Form BC-10 (<http://lwd.dol.state.nj.us/labor/handbook/formdocs/FormIntroBC10.html>) and provide it to any employee who is separated (either permanently or temporarily) from work for any reason.

E. New Jersey Plant Closing/Mass Layoff Law *N.J. Stat. Ann.* §. 34:21-1 et seq

New Jersey employers with 100 or more employees contemplating a transfer of operations, mass layoff, or closure that impacts 50 or more employees are required to comply with the Millville Dallas Airmotive Plant Job Loss Notification (NJ Warn Act). The NJ Warn Act supplements the protection of the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq. (WARN), which provides notice to employees who are being downsized in more situations and, most significantly, establishes increased penalties for employers who fail to comply with all of the notice obligations.

The NJ Warn Act applies to an individual or private business entity which employs a workforce of at least 100 full-time employees. The NJ Warn Act does not apply to a new business that has operated for less than three years, or an employer that increases staff for a short period of time (e.g. a seasonal business). Part-time employees who work an average of less than 20 hours per week or who work for an employer for less than six of the 12 months prior to the required notice date are not included in the calculation.

Employees must be terminated or laid off without a commitment of reinstatement within six months as a result of a “mass layoff,” “transfer of operations,” or “termination of operations.” As the name suggests, a “mass layoff” requires the layoff or termination of a substantial portion of the workforce at an establishment. For establishments with more than 1,500 employees, 500 or more full-time employees must be laid off or terminated. For smaller establishments, one third or more of the workforce, but a minimum of 50 full-time employees are required.

A reduction in force that is the result of a “transfer of operations” or “termination of operations” requires the layoff or termination of only 50 full-time employees. Unlike its federal counterpart, the notice obligation may be triggered by the transfer of a number of small operating units which would have individually been numerically insufficient. A transfer of work that

results in a partial shut-down of a facility or operating unit that results in the layoff or termination of 50 or more employees at an enterprise in New Jersey is enough to trigger the notice requirement.

Generally, the required number of employees must be terminated during a 30 day period in most cases. However, under some circumstances, layoffs of two or more groups that occur within a 90 day period may be combined. An employee offered the same position or a position with equivalent status, benefits, pay and other terms and conditions of employment, at a location within New Jersey that is not more than 50 miles from the previous place of employment is not counted as a “termination.”

Employers must provide written notice at least 60 days in advance of a “mass layoff,” “transfer of operations,” or “termination of operations” to each full-time employee whose employment is to be impacted, the Commissioner of the New Jersey Department of Labor and Workforce Development, the chief elected official of the municipality where the affected establishment is located, and any collective bargaining agent of the affected employees. This notice period conforms with the 60 days’ notice presently required under the federal WARN Act. If the federal WARN Act is amended to require a longer period of notice, the longer notice period will apply. The Commissioner of the New Jersey Department of Labor and Workforce Development’s official notification forms are available for use by employers. See: <http://lwd.dol.state.nj.us/labor/lwdhome/warn/RapidResponse.html>.

The most significant exception to the notice requirement is related to layoffs of more than six months which had been announced at their outset to be of six months duration or less. The NJ Warn Act will not consider these layoffs a “termination of employment” if: 1) their extension beyond six months is caused by business circumstances not reasonably foreseeable at the time of the initial layoff, and 2) notice is given at the time that it becomes reasonably foreseeable that an extension beyond six months will be required.

In addition, the NJ Warn Act specifies that any termination of operations which results from fires, floods, natural disasters, national emergencies, acts of war, civil disorders, industrial sabotage, decertification from participation in the Medicare and Medicaid programs, or license revocation pursuant to federal law will not trigger employer notification obligations. Interestingly, under the state’s statute, this exception is not applicable to transfers of operations or mass layoffs.

These limited exceptions are less comprehensive than those provided in the federal WARN Act. For example, there is no provision for reduced notice for a business that is faltering or for unforeseen business circumstances. In addition, unlike its federal counterpart, the NJ Warn Act does not contain a reduction of the notification period if an employer is actively seeking capital or business to avoid or postpone a shut-down in circumstances where the giving of notice would undermine those efforts. Finally, the impact of a sale of a business on a New Jersey employer’s notice obligation is less than clear under the statute.

Under the NJ Warn Act, employers who fail to provide adequate notice must pay every affected full-time employee severance of one week of pay for each full year of employment. N.J.S.A. 34:21-2(b) in addition to any severance the employer has agreed to pay to employees under any policy, plan or union contract. The question of whether employers may amend their

severance plans to offset any payments required under NJ Warn is an open issue which is not specifically addressed in the statute.

XIV. CONCLUSION

New Jersey employers should be mindful that both state and federal laws regulate nearly every area of labor and employee relations. While this booklet contains a summary of New Jersey employment law, briefly refers to relevant federal law, and provides a basic reference for employers on how to operate their workplace, it is not a replacement for legal counsel.

The laws in New Jersey (as in any State) evolve over time, and employers should communicate directly with their Fisher & Phillips representative for any legal inquiries that arise. Notwithstanding the forgoing, we have written this summary from an “employer perspective” so that employers can refer to its contents for answers to their day-to-day issues and to potentially avoid lawsuits.

For further information, contact any attorney in the New Jersey office of Fisher & Phillips LLP at 908.516.1050 or visit our website at www.laborlawyers.com