

Insights, News & Events

NEW JERSEY AMENDS WORKPLACE BIAS LAW TO EXPAND PROTECTIONS AGAINST AGE DISCRIMINATION

Insights
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New Jersey Governor Phil Murphy just signed a bill amending the state's workplace bias statute by expanding protections against age discrimination. The most significant aspect of Assembly Bill No. 681, signed into law on October 5 and taking effect immediately, is the elimination of a provision of the New Jersey Law Against Discrimination (NJLAD) that permitted employers to refuse to hire or promote any person over 70 years old. What do New Jersey employers need to know about this development?

Significance of Amendment

The removal of the upper age limit is most significant for employers with less than 20 employees. They can no longer refuse to hire or promote an individual over the age of 70. The Age Discrimination in Employment Act of 1967 (ADEA), which applies to employers with 20 or more employees, does not have an upper age limit for its prohibitions on refusals to hire or promote individuals. However, some categories of damages available to those suing employers under the ADEA are limited. Now, due to the Amendment, all damages available to aggrieved workers under the NJLAD are available to all individuals age 70 and older.

Other Aspects of New Law

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The Amendment also imposes a higher standard for setting a mandatory retirement age for government employees. It eliminates the provision that allowed government employers to force employees to retire if they could show “the retirement age beared a manifest relationship to the employment in question.” However, the Amendment does not eliminate the NJLAD’s language permitting government employers to mandate their employees retire upon the attainment of a certain age if the employer can show the employee is unable to adequately perform his or her duties. Moreover, the Amendment does not alter mandatory retirement for certain government employees, such as state judges.

Finally, the new law also expands the remedies available to employees forced to retire (now including all those available under the NJLAD) and the forums in which employees can file a complaint. Before the Amendment, employees forced to retire could only seek reinstatement of employment and backpay by filing a complaint with the Attorney General.

What Should You Do?

This revision of the law should cause you to revisit any written policies or other company policies related to hiring restrictions for those over the age of 70. Now that this area of the law has changed, you will need to bring your hiring policies and practices into line with the current state of affairs.

Even if your policies and practices were not restricted in such a way, this amendment will no doubt bring the concept of age discrimination to the forefront of the minds of workers and plaintiffs’ attorneys alike – so it should serve as a good reminder for to you ensure your compliance efforts are up to date when it comes to age bias issues. In particular, you should review and revise, if necessary, your criteria for promotions and hiring to ensure age is not taken into consideration when deciding which employees to promote or hire. You should also make sure your workforce is up to date on any discrimination training, including training on implicit bias.

Employment laws in New Jersey are rapidly changing and evolving. In addition to this Amendment to the NJLAD, the governor has expressed interest to significantly expand the scope of the law in other ways. Fisher Phillips will continue to monitor any changes and provide updates as warranted, so make sure that you are subscribed to [Fisher Phillips' Insights](#) to get the most up-to-date information direct to your inbox. Be sure to reach out to your Fisher Phillips attorney, the authors of this Insight, or any attorney in [our New Jersey office](#) should you have any questions about legal requirements.