Federal Court: New Jersey's Equal Pay Act Is Not Retroactive

Insights
2.13.19

New Jersey employers can breathe a sigh of relief knowing that a federal court has just pronounced that the Diane B. Allen Equal Pay Act, which went into effect on July 1, 2018, is *not* retroactive. This gives you some additional time to comply with the dictates of the law—the most sweeping equal pay statute enacted in the country—without the fear that employees will succeed in federal lawsuits alleging non-compliance with the law's equal pay mandates prior to its enactment. While there is a chance that a state court might view things differently, this decision is a positive development.

The Diane B. Allen Equal Pay Act: A Quick Summary
The Diane B. Allen Equal Pay Act is an amendment to the New Jersey Law Against Discrimination (LAD), which makes it unlawful for a New Jersey employer "to pay any of its employees who is a member of a protected class at a rate of compensation, including benefits, which is less than the rate paid by the employer to employees who are not members of the protected class for substantially similar work, when viewed as a composite of skill, effort and responsibility." With 17 protected categories recognized in New Jersey, compliance can be a challenge.

What's more, the statute of limitations under the Act is ***six years***—three times the statute of limitations for claims under the LAD and the federal Equal Pay Act, and double the statute of limitations for claims of willful violations of the Equal Pay Act. The Act provides that an unlawful employment practice occurs *each time* the employee is affected by the discrimination in compensation. Thus, each occasion that wages, benefits, or other compensation are paid is a separate act of discrimination, and each and every paycheck where an employee is paid less than someone who performs substantially similar work could constitute a separate cause of action.

However, the Act is silent as to whether it applies retroactively to claims that arose before the effective date of the law—which could make employers potentially liable for equal pay violations that arose as early as 2012.

Federal Court Determines The Act Is Not Retroactive
The U.S. District Court for the District of the New Jersey recently considered whether the Act applies retroactively in *Perrotto v. Morgan Advanced Materials, PLC*, No. 2:18-13825 (D.N.J. Jan. 15, 2019). There, the plaintiff alleged gender-based discrimination and retaliatory compensation practices under the Act during her employment, which ended on April 5, 2018—approximately three months *before* the Act became effective. The *Perrotto* court ruled that the Act is not retroactively

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applicable to conduct occurring prior to its July 1, 2018 effective date and dismissed the plaintiff's claims under the Act with prejudice.

In reaching this conclusion, the court considered the legislative intent behind the Act. Specifically, the court noted that the law was passed on April 25, 2018, with an effective date of July 1, 2018. The court reasoned that the delayed enactment evidenced legislative intent for a prospective application only. Moreover, the court noted that there was no evidence that the legislature sought to explain or clarify existing law by enacting the Act, as it was a "first-of-its-kind" type of statute.

Impact For New Jersey Employers

With a six-year statute of limitations at issue, this decision was a big win for New Jersey employers. You now have certainty that employees cannot make federal claims of unequal pay under the Act that arise prior to July 1, 2018, and that you will not be on the hook for any alleged violations that took place before the effective date of the law.

While employees may still allege equal pay claims under the federal Equal Pay Act, the statute of limitations and scope of the claims is more limited than under the Act. Moreover, until a state court signals that it agrees with the *Perrotto* decision, there remains a chance that a New Jersey state court might take a different view and permit retroactive claims under the Act.

However, as time moves forward, employees will eventually be able to make a claim dating back up to six years, and the risk of a state court lawsuit hangs in the air. Therefore, you should take the time now to review your pay practices to ensure compliance with the Act moving forward in order to best defend against future claims.

For additional background on the Diane B. Allen Equal Pay Act, click here and here. For more information on how the Act could affect your workplace, contact any attorney in our New Jersey office at (908) 516-1050, your Fisher Phillips attorney, or a member of the Pay Equity Practice Group.

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