



NJ Employment Legislation Had A Blockbuster Year

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In the past year, New Jersey has enacted legislation imposing new obligations on employers that require changes to pay practices, a heightened review of record-keeping, additional leave, and updates to handbooks and company policies, job applications, and other business practices.

These changes, outlined below, not only will require employers with operations in the Garden State to review and amend company policies, handbooks and employee agreements, but may also require employers to take a closer look at what is to come in 2020 and how additional changes may impact their workforces in the long run.

Minimum Wage Increases to \$15

Legislation enacted on Feb. 4 gradually increases the state's minimum wage to \$15 an hour for most employees by Jan. 1, 2024. There are certain exceptions for employers with five or fewer employees, tipped employees, seasonal workers and employees engaged in farm labor. After 2024, the minimum wage will increase only to keep pace with increases to the consumer price index or the federal minimum wage.

In addition to making any required wage adjustments, employers will need to ensure that their posters are current and keep an eye out for any increase in the federal minimum wage from Washington, D.C.

Strengthening Wage Violations

Effective Aug. 6, New Jersey significantly strengthened the wage theft provisions of its wage and hour laws to become the toughest in the country.

The law provides for liquidated damages of 200% in addition to the payment of wages owed for any wage violations and increases the statute of limitations from two years to six years. Employers may have an affirmative defense if they: (1) demonstrate they acted in good faith with reasonable grounds for believing the action was not a violation; (2) admit the violation; and (3) pay the amount owed within 30 days' notice of the claim.

The law also criminalizes certain wage and hour violations and significantly increases exposure to

damages, penalties and fines for violations. Other key measures include a presumption of retaliation for adverse action following complaints regarding employer pay practices and an alteration of key employment relationships by legislating successor and joint employer status.

It is critical that employers review their pay and record-keeping practices to ensure employees are paid in compliance with the law to avoid civil and criminal penalties.

Ban on Inquiring About Salary History

Starting Jan. 1, 2020, New Jersey employers will no longer be allowed to ask prospective employees about their salary history or require that salary history satisfy any particular threshold to be considered for a position. The law provides a private right of action and civil penalties for violations.

There are certain circumstances where salary history may be considered, including where an applicant volunteers the information or with respect to applications for internal transfers or promotions. Additionally, employers are not prohibited from offering applicants information about wage or salary rates set for the job.

Employers should review application materials and remove questions inquiring about salary history. Multistate employers may keep salary history questions on their application if there is a disclaimer instructing an applicant for a position located in New Jersey not to answer.

Expansion of Family and SAFE Leave

Effective Feb. 19, New Jersey's leave laws were significantly expanded under the Family Leave Act, or FLA, and Security and Financial Empowerment, or SAFE, Act, as were its state-provided, income-replacement benefits under New Jersey Family Leave Insurance, or NJFLI. Employers with 30 employees or more must comply. This was lowered from the previous threshold of 50 employees.

Additionally, the definition of "family member" now includes any individual related by blood and any individual with a close association equivalent to a family relationship.

The FLA now also provides job-protected leave for bonding with a newborn child conceived through a gestational carrier agreement or a newly placed foster child, permits intermittent leave for 56 days and for bonding without employer consent, and reduces the notice requirement for most covered leaves.

Employers may no longer require employees to use accrued paid leave for a leave covered by the SAFE Act. However, employees are now eligible for NJFLI benefits for this time off.

Additionally, effective July 1, 2020, NJFLI benefits will increase from six to 12 weeks and from 66.6% to 85% of an employee's average weekly wage to a weekly maximum of approximately \$860

to 60% of an employee's average weekly wage to a weekly maximum of approximately \$600.

New Jersey now provides some of the most generous family leave benefits in the country, and employers should be updating their policies to inform managers of these changes and the prohibitions against retaliation. They must also post updated notices in a conspicuous place.

Limits on Contract and Settlement Terms

An amendment to the New Jersey Law Against Discrimination enacted and effective March 18, significantly impacts employment contracts, settlement agreements and arbitration agreements entered into after March 17, 2019.

Any provision in an employment contract or settlement agreement having the purpose or effect of concealing details relating to claims of discrimination, retaliation or harassment violates public policy and is unenforceable. The law requires a bold, prominently placed notice in an agreement resolving a claim of discrimination, retaliation or harassment.

This law effectively voids arbitration agreements relating to discrimination, harassment or retaliation claims and precludes other common provisions like jury trial waivers, damages caps and shortened statutes of limitation. Litigation has been filed challenging the arbitration prohibition on preemption grounds under the Federal Arbitration Act.

Lastly, the law prohibits retaliation against anyone who does not enter into an agreement that contains a waiver or nondisclosure provision.

Employers should review form agreements and carefully consider any adverse action against an employee who refuses to sign an agreement that might contain a provision contrary to the law.

Medical Marijuana Law Amendments

Effective July 2, 2019, an employer cannot take adverse employment actions against an employee who has been authorized by a health care provider for the medical use of cannabis and registered with the state's Cannabis Regulatory Commission based solely on his/her registrant status. Employers must provide written notice of this to employees and applicants of their right to explain positive drug tests. Employers may discipline employees for possession or use of intoxicating substances during work hours or on the work premises during nonwork hours.

Employers should update their policies to include registered medical marijuana users as a protected class and prepare the required notice for employees or applicants who test positive.

Conclusion

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This year may have been one for the record books when it comes to significant employment legislation in New Jersey. Depending on your industry and current practices, these changes will impact your business in different ways, from both a financial and operational standpoint. Therefore, it is important for New Jersey employers to periodically review their job applications, employee handbooks, posters and employment practices to ensure they are in compliance with the ever-changing legal landscape.

In 2020, we expect the state to continue enacting progressive employment laws, as discussions continue on hot-button employment issues including independent contractor status and fair workweek laws requiring advance notice of work schedules and compensation for canceled shifts. By staying ahead of these developments, employers will be better situated to manage both their employees and business needs in a rapidly changing legal landscape.

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Sarah Wieselthier
Partner
908.516.1064
Email

Related Offices

New Jersey