

HR e-Alert: New Jersey Goes Beyond Gender in New Equal Pay Law

Background

New Jersey has joined the ranks of other states by enacting an Equal Pay Law. The Diane B. Allen Equal Pay Act goes into effect on July 1, 2018, expanding upon the state's existing discrimination laws. What is significant about this pay equity law is that it extends protections to *all* employee classes, not just gender as most other states have done. A protected class under this new law is broadly defined to include race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, sexual orientation, genetic information, pregnancy, sex, gender identity, disability, or liability for service in the armed forces.

What employers need to know

Once this law takes effect, it will be unlawful to pay an employee less than what is paid to another employee for substantially similar work, which should be looked at in terms of skill, effort, and responsibility.

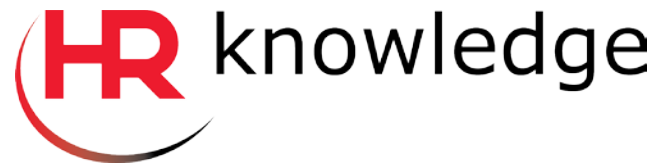
Like other state equal pay laws, there are permissible reasons for different rates of pay. Different rates of pay will only be allowed if the differential is based on a merit or seniority system, or if the employer demonstrates that:

- The differential is based on one or more legitimate bona fide factors, such as training, education, experience, or the quantity or quality of production;
- These bona fide factors are not based on sex or any other characteristic of the protected classes;
- Each factor is applied reasonably;
- One or more of these factors account for the entire wage differential;
- These factors are job-related and based on a legitimate business necessity; and
- All these factors are based on all employees and are not limited to those who work within a specific geographic location.

Next Steps for Employers

With the new law taking effect July 1, employers should start preparing now. They should proactively review their pay and compensation practices, to ensure equal pay for employees who do substantially similar work and to confirm that any pay differentials are based on legitimate, nondiscriminatory reasons. The price is steep for noncompliance; employers found to violate this law can face treble damages — i.e., three times the amount of the pay differential. Given the number of states that have or plan to pass pay equity laws, it is critical for employers to understand antidiscrimination and pay equity laws, and to review pay policies to ensure they are compensating their employees fairly. We recommend that you consider putting the following practices in place:

1. Conduct a proactive pay equity analysis — the first and best step you can take to ensure fair pay and diminish legal risk.
2. Ensure that all your pay differentials comply with the EEOC rule that pay differentials are permitted when based on “seniority, merit, quality or quantity of production.”
3. Choose a compliance officer in your organization who will be responsible for monitoring pay practices and making sure the company complies with antidiscrimination laws.



4. Annually review your compensation systems to spot and change potential pay disparities.
5. Look at all forms of compensation, not just salary. These include bonuses, benefits, training, and overtime and separation pay.
6. Correct problems as soon as they're identified; don't let them fester.
7. Consider hiring an outside consultant such as HR Knowledge to conduct a pay equity analysis.

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