

Client Alert

Recent Updates to New Jersey Employment Law

NJ Senate Strengthens Penalties for Wage and Hour Violations

April 26, 2019 – On March 25, 2019, the New Jersey Senate approved legislation to strengthen the enforcement mechanisms against employers for failure to pay wages to employees for time worked. [Senate Bill 1790](#) bolstered New Jersey’s already-existing wage theft statute by providing liquidated damages penalties for underpayment and retaliation in connection with the failure to make payment of wages. Under the new bill, employers who fail to pay earned wages to employees will be liable not only for the amounts owed, but also for liquidated damages in an amount equal to two hundred percent (200%) of the wages owed. In addition, employers who are found to have violated the wage statute shall be subject to additional civil and criminal penalties, including fines ranging between \$500 and \$10,000, or prison terms ranging between 10 days and 18 months, or both. The bill also strengthens existing anti-retaliation provisions under New Jersey state law, providing a range of similar penalties for those employers who discharge or create other adverse employment consequences for employees who bring claims for unpaid wages or otherwise engage in “protected activity.”

The bill further imposes joint and several liability for statutory violations in the event that a labor services provider supplies workers to a client employer. In that case, both the labor services provider and the client employer would be joint and severally liable for any violations of applicable New Jersey wage and hour laws.

Employers found to have improperly withheld wages in an amount equal to or greater than \$5,000 may also be audited by the commissioner of the state’s Department of Labor and Workforce Development.

The bill also provides that all violations found to exist will be disclosed on accessible websites to the public.

Under the new proposed legislation, all employers must provide employees with a written copy of the statement of their rights under that New Jersey’s wage and hour laws (currently pending before the legislature along with the bill), and an explanation of [how to file a claim](#) or take other actions in the event of an alleged violation.

Amendment to New Jersey Law Against Discrimination Gives Employees New Protections in Employment and Settlement Agreements

On March 18, 2019, New Jersey Governor Phil Murphy signed into law a new amendment to the New Jersey Law Against Discrimination (“LAD”) granting employees further protection under the law. Effective upon signing, the amendment, [Senate Bill 121](#), prohibits the enforcement of employment agreements that require employees to (i) waive in advance any “substantive or procedural right or remedy relating to a claim of employment discrimination, retaliation, or harassment” or (ii) prospectively waive any of their rights or remedies under the LAD, “or any other statute or case law.” This latter protection does not apply to the terms of collective bargaining agreements, but all other employment agreements that feature such terms are deemed unenforceable as a matter of public policy and, now, law.

The amendment has the effect of nullifying any employment agreement that purports to require an employee to waive his/her right to a jury trial, including agreements that require the employee to pursue a LAD claim through compelled arbitration. There remains an important open issue as to whether and to what extent such provisions will be challenged as the amendment poses a potential conflict with the Federal Arbitration Act (“FAA”), which preempts state laws that preclude the use of arbitration agreements. *See e.g., Kindred Nursing Centers LP v. Clark*, 137 S. Ct. 1421 (2017); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 341 (2011).

The amendment also prohibits provisions in employment contracts and settlement agreements which have the purpose or effect of concealing the details regarding a claim of discrimination, retaliation or harassment. To the extent such provisions remain in these agreements, they are unenforceable against the employee. However, if the employee “**publicly reveals sufficient details of the claim so that the employer is reasonably identifiable,**” the provision becomes unenforceable against the employer and the employer may likewise reveal previously confidential information. Such notice language must also be bolded and prominently included in any confidentiality or nondisclosure provision that is part of a settlement agreement resolving a discrimination, retaliation or harassment claim by an employee against an employer.

The New Jersey amendment to the LAD is similar to a [New York law](#) passed last year, which provides that nondisclosure provisions in agreements settling claims of sexual harassment (as opposed to other claims of discrimination, harassment and retaliation, as provided for in the New Jersey amendment) are void and unenforceable unless agreed to by the complaining party in a separate written agreement. The New York law tracks protections currently afforded employees under the Older Workers Benefit Protection Act of 1990 (OWBPA) who are over 40 years of age, and provides the complaining party at least 21 days to consider whether to accept or refuse a nondisclosure provision, and 7 days to revoke a signed agreement that includes such a provision. The New Jersey amendment, however, departs from the New York law and the OWBPA in that a complaining party can never be bound by the confidentiality or nondisclosure provision contained within the four corners of the settlement agreement itself.

New Jersey Enacts Paid Family Leave

The New Jersey legislature also recently signed into law a bill which expands the scope of the current New Jersey Family Leave Act (“NJFLA”). Currently, NJFLA provides workers at companies with 50 or more employees certain compensation benefits for up to six weeks to bond with a newborn or newly adopted child, or to provide care for a seriously ill or injured family member. These compensation benefits are currently equal to two-thirds of an employee’s pay, but capped at fifty-three percent (53%) of the Statewide average weekly salary (roughly \$633 per week) for up to six weeks.

Under [Assembly Bill A3975](#), as of June 30, 2019, however, NJFLA will apply to employers with 30 or more employees (down from the prior threshold of 50 or more employees) for each of the last twenty (20) workweeks. Additionally, on July 1, 2020, the period of leave would increase from 6 to 12 weeks and employees would be entitled to cash benefits equal to eighty-five percent (85%) of the employee’s pay, capped at seventy percent (70%) of the Statewide average weekly salary (roughly \$860 per week) for up to 12 weeks.

The bill also updates NJFLA in several other respects, including:

- The definition of “parent” now includes “foster parent,” as well as those that become parents via a gestational carrier. The definition of “family leave” is similarly expanded to include leave to bond with a foster child or a child born via a gestational carrier.
- The definition of “family member” previously limited to a child, parent, spouse, or one partner in a civil union couple, now includes a parent-in-law, sibling, grandparent, grandchild, domestic partner, blood relatives, as well as “any other individual that the employee shows to have a close association with the employee which is the equivalent of a family relationship.” This definition expands coverage much the same way as New York does under its [Earned Safe and Sick Time Act](#).
- Employees may also now take leave under the New Jersey Security and Financial Empowerment Act (“NJ SAFE Act”) to care for any of the aforementioned “family members” that are the victims of an incident of domestic violence or a sexually violent offense.

These new paid family leave laws will be funded through a small payroll deduction taken out of every New Jersey worker’s paycheck effective as of January 1, 2019.

If you require any further information concerning these updates or about any other employment-related issues in New Jersey or elsewhere, please feel free to contact:

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