

PROPOSALS TO STRENGTHEN NEW JERSEY'S ANTI- HARASSMENT LAWS

Released by the Office of Governor Phil Murphy (2/18/2020)

1. (New section) Legislative findings and declarations concerning unlawful harassment.

The Legislature finds and declares:

a. The purpose of this section is to affirm that the right to be free from discrimination in employment, housing, business relationships, and places of public accommodation includes the right to be free from unlawful harassment based on any characteristic protected by the Law Against Discrimination.

b. Among the goals of this act is to codify the standard for hostile environment harassment claims set forth in *Lehmann v. Toys R Us, Inc.*, 132 N.J. 587 (1993); *Taylor v. Metzger*, 152 N.J. 490 (1998); *L.W. v. Toms River Regional Schools Board of Education*, 189 N.J. 381 (2007); and Justice Ginsburg's concurrence in *Harris v. Forklift Systems*, 510 U.S. 17, 26 (1993) (Ginsburg, J., concurring).

c. It is the further intent of the Legislature to disavow interpretations of the standard for hostile environment harassment claims under the Law Against Discrimination which are inconsistent with the precedent enumerated in paragraph (1) of this subsection, which shall include decisions such as *Clayton v. City of Atlantic City*, 538 Fed. Appx. 124, 129 (3d Cir. 2013), in which the court held that an incident in which a supervisor intentionally grabbed an employee's buttocks did not rise to the level of severe or pervasive conduct; *Godfrey v. Princeton Theological Seminary*, 196 N.J. 178, 198 (2008), in which the court held that incidents must be described "in sterile terms, stripped of the overlay of [plaintiffs'] subjective reactions to these interactions," because, in the court's view, those reactions were not relevant to "the determination of whether the conduct is severe or pervasive," and held that the alleged harasser's "repeated and unwelcome behavior was one of the socially uncomfortable situations that many women encounter in the course of their lives when someone in whom they are not interested persists in trying to persuade them otherwise."; *id.* at 201 (harassing conduct not directed at or witnessed by plaintiff cannot factor into analysis of a hostile work environment claim); and *Anastasia v. Cushman Wakefield*, 455 Fed. Appx. 236, 237-240 (3d Cir. 2011), where the court found that no reasonable jury could find severe or pervasive harassment where (1) plaintiff's superior informed her that "he was romantically attracted to her and had been for years," and then, over that day and the following day, followed

her to the parking lot and gently grabbed her arm, asked her for a photograph of her and her new boyfriend, and “concocted a pretext to have [plaintiff] meet him alone in a break room”; (2) plaintiff immediately took a temporary leave of absence, while her superior continued to call and send emails and text messages to her, despite her repeated statements that his further contact was unwanted; and (3) plaintiff refused to return to work when her employer refused to create an arrangement under which she would not ultimately have to report to the alleged harasser, and her employer terminated her while she was out on leave, but treated the action as a voluntary resignation.

(3) It is not the intent of the Legislature, by enacting this law, to disavow, repudiate or supplant any other established doctrines regarding sexual harassment or unlawful harassment, including: (1) quid pro quo sexual harassment, which exists separately from hostile environment sexual harassment; or (2) business relationship liability, consistent with subsection l. of section 11 of P.L.1945, c.169 (C.10:5-12) and *J.T.’s Tire Service, Inc. v. United Rentals North America, Inc.*, 411 N.J. Super. 236 (App. Div. 2010).

2. (New section) Unlawful harassment; standard; interpretation.

a. It shall be unlawful discrimination in violation of P.L.1945, c.169 (C.10:5-1 et seq.) for a person or entity to subject an individual, because of sex or any other characteristic protected under section 11 of P.L.1945, c.169 (C.10:5-12), to unlawful harassment.

b. In order to state a claim for unlawful harassment based on a hostile work environment under P.L.1945, c.169 (C.10:5-1 et seq.), a complainant must show conduct that occurred because of sex or any other characteristic protected under section 11 of P.L.1945, c.169 (C.10:5-12), which a reasonable person in the complainant’s protected class would find to be sufficiently severe or pervasive so as to alter the conditions of employment and create an intimidating, hostile, or offensive work environment. When a violation of this subsection occurs in a workplace, it shall also be an unlawful employment practice.

(1) The following standards shall guide the determination of whether a violation of this subsection has occurred:

(i) A determination of whether the harassing conduct was sufficiently severe or pervasive to create an intimidating, hostile, or offensive work environment shall be based upon the totality of the circumstances. In evaluating the severity or pervasiveness of the alleged harassing conduct,

the cumulative effect of all incidents of harassing conduct shall be considered as a whole rather than considering individual incidents in isolation, provided, however, that a single incident of harassing conduct may be sufficiently severe to create a triable issue of fact regarding the existence of an intimidating, hostile, or offensive work environment. De minimis incidents such as petty slights or trivial inconveniences shall not by themselves be actionable under this act, provided however that a court shall consider all evidence, including de minimis or isolated incidents, when evaluating the totality of the circumstances.

(ii) A determination of whether harassing conduct is sufficiently severe or pervasive so as to create an intimidating, hostile, or offensive work environment shall consider whether a reasonable person in complainant's protected class would consider the conduct to be sufficiently severe or pervasive to alter the conditions of employment, provided that a complainant's subjective responses to the harassing conduct shall be considered as part of the totality of the circumstances that are relevant to whether a reasonable person belonging to the same protected class would consider the conduct to be sufficiently severe or pervasive to alter the conditions of employment. In addition, the complainant's knowledge of harassment directed to others may be relevant to evaluating whether a hostile work environment exists, whether or not the complainant witnessed the harassing conduct.

(iii) For purposes of this section, harassing conduct may include but not be limited to physical contact or gestures, threats, abusive or offensive language, damage to or interference with personal property, or offensive written or verbal communications or comments, whether such conduct is of a sexual nature or otherwise. Harassing conduct shall not be construed to require physical contact to qualify as severe or pervasive.

(iv) It shall not be necessary to demonstrate loss of tangible job benefits to establish a violation of this subsection, nor shall it be necessary for the complainant to prove that the complainant's tangible productivity declined as a result of the harassing conduct.

(2) The following standards shall be applicable for assessing employer liability for hostile work environment harassment pursuant to a negligence theory under P.L.1945, c.169 (C.10:5-1 et seq.):

(i) An employer shall be liable for the unlawful harassment if the entity, or its agents or supervisors, knew or should have known of the harassing conduct and failed to take appropriate preventive or corrective action.

(ii) An employer may be held responsible for the harassing conduct of non-employees if the entity, or its agents or supervisors, knew or should have known of the conduct and failed to take appropriate preventive or corrective action. However, in reviewing cases involving the acts of non-employees, consideration shall be given to the extent of the entity's control and any other responsibility that the entity may have with respect to the conduct of those non-employees.

(iii) Nothing in this subsection shall be deemed to in any way alter the standard for imposing direct or vicarious liability on the employer for the harassing acts of supervisors or superiors.

(3) For purposes of claims brought under this subsection alleging that an employer committed a violation of this section, the definition of "employer" shall include: any person who employs an individual to perform domestic work in their private residence; who employs an individual to perform domestic work in the private residence of a family member; or who is 18 years of age or older and resides in a private residence in which an individual performs domestic work. For purposes of such claims brought by an employee who performs domestic work, it shall also be an unlawful employment practice for an employer to allow any family member or member of their household, regardless of age, to engage in unlawful harassment based on any other category protected by this subsection, or for an employer to keep or request to keep permanent or continuing possession of the employee's passport or other identifying documents.

c. (1) The standard for assessing an unlawful harassment claim under this act alleging an intimidating, hostile, or offensive environment in housing or a place of public accommodation, including a school, shall be equivalent to the standard set forth in paragraph (1) of subsection b. of this section, but shall include consideration of whether the harassment created an intimidating, hostile, or offensive environment in housing, school, or other place of public accommodation.

(2) The standard for assessing liability of an entity for an unlawful harassment claim under this act alleging an intimidating, hostile, or offensive environment in housing or a place of public accommodation, including a school, shall be equivalent to the standard set forth in paragraph (2) of subsection b. of this section, but shall include consideration of whether the entity took appropriate preventive or corrective action in the applicable setting of housing, a school, or other place of public accommodation.

(3) The standard for assessing liability of an entity for an unlawful harassment claim under this act alleging an intimidating, hostile, or offensive work environment in the context of a business

relationship brought pursuant to subsection l. of section 11 of P.L.1945, c.169 (C.10:5-12), shall be equivalent to the standard set forth in paragraph (2) of subsection b. of this section.

3. (New section) Mandatory workplace policies on unlawful discrimination and harassment, including sexual harassment.

a. For purposes of this section, the terms “discrimination” and “harassment” refer to unlawful discrimination or harassment because of any characteristic protected by subsection a. of section 11 of P.L.1945, c.169 (C.10:5-12).

b. Within one year of the date of enactment of P.L. , c. (C.)(pending before the Legislature as this bill), all employers shall adopt a written nondiscrimination policy that establishes policies and procedures concerning unlawful discrimination and harassment, including sexual harassment, in the workplace which is applicable to all employees in their interactions with each other and with vendors, suppliers, customers, clients, and patrons, and which shall include, at a minimum, the following:

(1) a statement that unlawful discrimination or harassment in the workplace will not be tolerated and are considered a form of employee misconduct, and that sanctions will be enforced against individuals engaging in unlawful discrimination or harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue;

(2) a definition of unlawful discrimination and unlawful harassment in employment;

(3) examples of discriminatory and harassing behaviors prohibited by the policy;

(4) a description of the process for filing internal complaints about such discrimination or harassment and the complete contact information of the person or persons to whom complaints should be made;

(5) directions as to how to contact the division if a person believes their rights were violated;

(6) the statute of limitations periods applicable to filing a claim of unlawful discrimination and harassment under P.L.1945, c.169 (C.10:5-1 et seq.);

(7) a prohibition on retaliation against those who disclose, report, participate in an investigation of, or otherwise challenge such discrimination or harassment;

(8) examples of retaliatory behaviors prohibited by the policy;

(9) a description of potential consequences for violating the policy; and

(10) a statement of the employer's commitment to conducting prompt, thorough, and impartial investigations of complaints of such discrimination or harassment.

c. All employers shall disseminate the policy required in subsection b. of this section at least once annually to all employees, and to each employee:

(1) at the beginning of their employment;

(2) who complains internally about a violation of the policy, at the time such complaint is made;

(3) who is interviewed by the employer or the employer's designee in connection with any investigation of any complaint about a violation of the policy, prior to or at the time of such interview; and

(4) whenever any updates to the policy are made.

d. All employers shall review the policy at least annually to ensure that it complies with this section and other applicable laws and regulations.

e. All employers shall make the policy available in English, Spanish and any language spoken by an employee who does not speak English as their primary language and who has a limited ability or no ability to read, speak, write, or understand English, if the division has made the model policy described in paragraph (1) of subsection f. of this section available in that language.

f. The division shall, within six months of the date of enactment of this act, at a minimum:

(1) create one model nondiscrimination policy that satisfies the requirements of subsection b. of this section and that can be adopted by employers with fewer than 50 employees if they choose;

(2) create one model domestic work anti-harassment policy designed for use by any person who employs an individual to perform domestic work. That model policy shall include, but not be limited to, a definition of unlawful harassment, examples of harassing behaviors prohibited by the policy, the identity and role of the division, directions for how to contact the division, a description of unlawful retaliation, examples of retaliatory behaviors prohibited by the policy, and the applicable statute of limitations periods for bringing a claim under P.L.1945, c.169 (C.10:5-1 et seq.); and

(3) make the model policies required by paragraphs (1) and (2) of this subsection available at no cost on the division's website in English, Spanish, and any other language deemed

appropriate by the director, based on the size of the New Jersey state population that speaks each language and any other factor that the director shall deem relevant.

g. Employers with fewer than 50 employees may comply with:

(1) subsection b. of this section by adopting the model nondiscrimination policy promulgated by the division pursuant to paragraph (1) of subsection f. of this section and adding the complete contact information of the person or persons to whom complaints should be made;

(2) subsection c. of this section by distributing the model nondiscrimination policy promulgated by the division pursuant to paragraph (1) of subsection f. of this section to each employee:

(i) at the beginning of their employment;

(ii) at least once annually;

(iii) who complains internally about a violation of the policy, at the time such complaint is made;

(iv) who is interviewed by the employer or the employer's designee in connection with any investigation of any complaint about a violation of the policy, prior to or at the time of such interview; and

(v) whenever any updates to the policy are made.

(3) subsection d. of this section by ensuring that they adopt the version of the model nondiscrimination policy promulgated by the division pursuant to paragraph (1) of subsection f. of this section in force at the time those employers conduct their annual review; and

(4) subsection e. of this section by providing a printed copy of the model nondiscrimination policy promulgated by the division pursuant to paragraph (1) of subsection f. of this section:

(i) in English; or

(ii) in the language that an employee identifies as their primary language, if such employee has a limited ability or no ability to read, speak, write, or understand English and if the division has made the model policy available in that employee's primary language.

(5) Nothing in this subsection shall be interpreted as requiring an employer with fewer than 50 employees to adopt the model nondiscrimination policy promulgated by the division pursuant to paragraph (1) of subsection f. of this section rather than adopting its own policy that meets the requirements outlined in subsections b., c., d., and e. of this section.

h. In addition to the requirements in subsections b., c., d., and e. of this section, employers

with 50 or more employees shall:

(1) in addition to the content requirements outlined in subsection b. of this section, customize their policy to their specific workplace and industry by, at a minimum, including:

(i) multiple channels through which an employee may report unlawful discrimination or harassment; and

(ii) a general description of the process by which the employer will conduct prompt, thorough, and impartial investigations and respond to complaints regarding such discrimination or harassment.

(2) In addition to the dissemination requirements outlined in subsection c. of this section:

(i) post the policy in a prominent location on the employer's website, provided, however, that nothing in this subsection shall require an employer to create or maintain a website for the sole purpose of posting the policy thereon; and

(ii) disseminate the policy to any employee upon that employee's promotion.

(3) In addition to the translation requirements outlined in subsection e. of this section, translate the nondiscrimination policy required by subsection b. of this section into any language identified by an employee as their primary language, if such employee does not speak English as their primary language and has a limited ability or no ability to read, speak, write, or understand English.

i. Any person who employs an individual to perform domestic work in their private residence or in the private residence of a family member is encouraged, at the time of any such hire and at least once annually, to provide to such individual a printed copy of the model domestic work anti-harassment policy promulgated by the division pursuant to paragraph (2) of subsection f. of this section.

j. For purposes of this section, an employer has 50 or more employees if such employer employs 50 or more employees, whether employed in New Jersey or not, for each work day during each of 20 or more calendar workweeks in the then current or immediately preceding calendar year.

k. Notwithstanding any other provision of P.L.1945, c.169 (C.10:5-1 et seq.), nothing in this section shall be construed to permit a private person to file a complaint with the division or initiate an action in superior court alleging a violation of P.L.1945, c.169 (C.10:5-1 et seq.) because of any failure to comply with the provisions of this section. However, the Attorney General or the

director may enforce violations of this section and may pursue any penalty or remedy available under P.L.1945, c.169 (C.10:5-1 et seq.) in doing so. An employer's compliance with this section, or use of materials provided for herein, shall not, in and of itself, protect the employer from liability under this act.

4. (New section) Mandatory workplace training on unlawful discrimination and harassment, including sexual harassment.

a. For purposes of this section, the terms "discrimination" and "harassment" refer to unlawful discrimination or harassment because of any characteristic protected by subsection a. of section 11 of P.L.1945, c.169 (C.10:5-12).

b. Beginning one year from the effective date of P.L. , C. (C.)(pending before the Legislature as this bill), all employers shall provide interactive training to all employees other than those employees covered by subsection c. of this section on the nondiscrimination policy required by section 3 of P.L. , c. (C.)(pending before the Legislature as this bill), regarding the prevention of unlawful discrimination and harassment, including sexual harassment, in the workplace. The training shall be provided to all new employees within 90 days of initial hire, and to all employees at least once every two years. Such training shall include, at minimum:

(1) A statement that unlawful discrimination or harassment in the workplace will not be tolerated and are considered a form of employee misconduct, and that sanctions will be enforced against individuals engaging in discrimination or harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue;

(2) A definition of unlawful discrimination and unlawful harassment in employment;

(3) Examples of discriminatory and harassing behaviors prohibited by the nondiscrimination policy adopted by the employer pursuant to section 3 of P.L. , c. (C.)(pending before the Legislature as this bill);

(4) A description of the process for filing internal complaints about such discrimination or harassment;

(5) Directions as to how to contact the division if a person believes their rights were violated;

(6) A description of the prohibition on retaliation against those who disclose, report, participate in an investigation of, or otherwise challenge such discrimination or harassment;

(7) Examples of retaliatory behaviors prohibited by the nondiscrimination policy adopted by the employer pursuant to section 3 of P.L. , c. (C.)(pending before the Legislature as this bill); and

(8) Information concerning bystander intervention.

c. Beginning one year from the effective date of P.L. , C. (C.)(pending before the Legislature as this bill), all employers shall provide interactive training to all supervisory employees regarding the prevention of unlawful discrimination and harassment in the workplace at least once every two years and shall provide such training to all new supervisory employees within 90 days of initial hire or promotion. Such training shall include, at minimum:

(1) the topics required by paragraphs (1) through (8) of subsection b. of this section;

(2) the specific responsibilities of a supervisor regarding the prevention of discrimination and harassment;

(3) the specific responsibilities of a supervisor regarding the prohibitions against retaliation; and

(4) measures and corrective actions supervisors may take to appropriately address complaints and instances of discrimination, harassment, and retaliation.

d. All employers shall keep a record of their employees' completion of all trainings required by subsections b. and c. of this section. Such records may be electronic. Employers shall maintain such records for at least three years and such records must be made available for division inspection upon request.

e. All employers shall review the trainings required by subsections b. and c. of this section at least annually to ensure that they comply with this section and with other applicable laws and regulations.

f. All employers shall make the trainings required by subsections b. and c. of this section available:

(1) in English; and

(2) in any language spoken by an employee who does not speak English as their primary language and who has a limited ability or no ability to read, speak, write, or understand English, if the division has made the training described in subsection g. of this section available in that language.

g. In addition to any other actions the division may undertake, it shall, within six months

of enactment of P.L. , C. (C.)(pending before the Legislature as this bill):

(1) develop an online, one-hour training module that satisfies the requirements of subsection b. of this section and that can be used by employers with fewer than 50 employees if they choose;

(2) develop an online, two-hour training module that satisfies the requirements of subsection c. of this section and that can be used by employers with fewer than 50 employees if they choose; and

(3) make the training modules required by paragraphs (1) and (2) of this subsection available at no cost on the division's website in English, Spanish, and any other language deemed appropriate by the director, based on the size of the New Jersey state population that speaks each language and any other factor that the director shall deem relevant.

h. Employers with fewer than 50 employees may comply with the requirements of subsections b. and c. of this section by requiring their employees to view the model nondiscrimination trainings promulgated by the division pursuant to subsection g. of this section. For any employer that chooses to utilize the model trainings promulgated by the division pursuant to subsection g. of this section, they may also comply with the requirements of:

(1) subsection e. of this section by ensuring that they utilize the version of the model nondiscrimination training promulgated by the division pursuant to subsection g. of this section in force at the time such training is given; and

(2) subsection f. of this section by directing each employee to the model nondiscrimination trainings made available on the division's website pursuant to subsection g. of this section in English, Spanish, and any other languages deemed appropriate by the director.

Nothing in this section shall be interpreted as requiring an employer with fewer than 50 employees to utilize the model nondiscrimination training promulgated by the division pursuant to subsection g. of this section rather than adopting their own nondiscrimination training that meets the minimum requirements outlined in subsections b. and c. of this section.

i. Employers with 50 or more employees shall provide the trainings required by subsections b. and c. of this section in a live, in-person setting where participants can ask questions. They may not comply with the requirements of this section by using the model nondiscrimination training promulgated by the division. Such employers shall also provide interpretation at the trainings required by subsections b. and c. of this section for any employee who does not speak English as

their primary language and has a limited ability or no ability to read, speak, write, or understand English.

j. For purposes of this section, an employer has 50 or more employees if such employer employs 50 or more employees, whether employed in New Jersey or not, for each work day during each of 20 or more calendar workweeks in the then current or immediately preceding calendar year.

k. For purposes of this section, “interactive training” means that the training must be participatory. However, except where explicitly required herein, such “interactive training” is not required to be live or facilitated by an in-person instructor in order to satisfy the provisions of this section.

l. The training required by this section is intended to establish a minimum threshold and should not discourage any employer from providing for longer, more frequent, or more elaborate training regarding workplace harassment or other forms of unlawful discrimination.

m. Notwithstanding any other provision of P.L.1945, c.169 (C.10:5-1 et seq.), nothing in this section shall be construed to permit a private person to file a complaint with the division or initiate an action in superior court alleging a violation of P.L.1945, c.169 (C.10:5-1 et seq.), because of any failure to comply with the provisions of this section. However, the Attorney General or the director may enforce violations of this section and may pursue any penalty or remedy available under P.L.1945, c.169 (C.10:5-1 et seq.), in doing so. An employer’s compliance with this section, or use of materials provided for herein, shall not, in and of itself, protect the employer from liability for unlawful discrimination or harassment under this act.

5. (New section) Mandatory reporting on unlawful employment discrimination and harassment, including sexual harassment.

a. For purposes of this section, the terms “discrimination” and “harassment” refer to unlawful discrimination or harassment because of any characteristic protected by subsection a. of section 11 of P.L.1945, c.169 (C.10:5-12).

b. Beginning one year after the date of enactment of this act, employers with 50 or more employees shall be required to collect and annually report to the division the following data on complaints received regarding unlawful workplace discrimination or harassment, including sexual harassment, using the form created and made available on the division’s website pursuant to

subsection e. of this section for that purpose: the total number of complaints filed; the number of complaints filed that were found by the employer to be substantiated; the number of complaints filed that were found by the employer to be unsubstantiated; the number of complaints filed whose resolution is still pending.

c. The data submitted for each of the categories in subsection b. of this section shall be broken down by how many such complaints involved allegations of unlawful discrimination, harassment, or retaliation, as well as by the protected class or classes that the complainant alleged.

d. Employers shall be required to maintain any records related to the complaints reported to the division pursuant to subsections b. and c. of this section for at least three years and such records must be made available for division inspection upon request.

e. The division shall, within six months of the date of enactment of this act, create a form to be used by employers when submitting the data required to be reported under subsections b. and c. of this section. The division shall make such form available at no cost on its website.

f. For purposes of this section, an employer has 50 or more employees if such employer employs 50 or more employees, whether employed in New Jersey or not, for each work day during each of 20 or more calendar workweeks in the then current or immediately preceding calendar year.

g. Notwithstanding any other provision of P.L.1945, c.169 (C.10:5-1 et seq.), nothing in this section shall be construed to permit a private person to file a complaint with the division or initiate an action in superior court alleging a violation of P.L.1945, c.169 (C.10:5-1 et seq.) because of any failure to comply with the provisions of this section. However, the Attorney General or the director may enforce violations of this section and may pursue any penalty or remedy available under P.L.1945, c. 169 (C.10:5-1 et seq.), in doing so. An employer's compliance with this section, or use of materials provided for herein, shall not, in and of itself, protect the employer from liability for unlawful discrimination or harassment under this act.

6. Section 5 of P.L.1945, c.169 (C.10:5-5) is amended to read as follows:

5. As used in P.L.1945, c.169 (C.10:5-1 et seq.), unless a different meaning clearly appears from the context:

a. “Person” includes one or more individuals, partnerships, associations, organizations, labor organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and fiduciaries.

b. “Employment agency” includes any person undertaking to procure employees or opportunities for others to work.

c. “Labor organization” includes any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment.

d. “Unlawful employment practice” and “unlawful discrimination” include only those unlawful practices and acts specified in section 11 of P.L.1945, c.169 (C.10:5-12), including practices and acts constituting unlawful harassment.

e. “Employer” includes all persons as defined in subsection a. of this section unless otherwise specifically exempt under another section of P.L.1945, c.169 (C.10:5-1 et seq.), and includes the State, any political or civil subdivision thereof, and all public officers, agencies, boards, or bodies; provided, however, that employing any person to perform domestic work in an individual’s home or the home of an individual’s family member shall not qualify the individual as an employer, except as set forth in subsections a. and r. of section 11 of P.L.1945, c.169 (C.10:5-12).

f. “Employee” [does not include any individual employed in the domestic service of any person] includes all individuals employed by an employer, without regard to whether any such individual, including an intern, performs such services in exchange for a salary or wage; provided, however, that nothing in this subsection shall be construed to alter the definition of employee under any other law or regulation other than for purposes of P.L.1945, c.169 (C.10:5-1 et seq.).

g. “Liability for service in the Armed Forces of the United States” means subject to being ordered as an individual or member of an organized unit into active service in the Armed Forces of the United States by reason of membership in the National Guard, naval militia or a reserve component of the Armed Forces of the United States, or subject to being inducted into such armed forces through a system of national selective service.

h. “Division” means the “Division on Civil Rights” created by P.L.1945, c.169 (C.10:5-1 et seq.).

i. “Attorney General” means the Attorney General of the State of New Jersey or the Attorney General’s representative or designee.

j. “Commission” means the Commission on Civil Rights created by P.L.1945, c.169 (C.10:5-1 et seq.).

k. “Director” means the Director of the Division on Civil Rights.

l. “A place of public accommodation” shall include, but not be limited to: any tavern, roadhouse, hotel, motel, trailer camp, summer camp, day camp, or resort camp, whether for entertainment of transient guests or accommodation of those seeking health, recreation, or rest; any producer, manufacturer, wholesaler, distributor, retail shop, store, establishment, or concession dealing with goods or services of any kind; any restaurant, eating house, or place where food is sold for consumption on the premises; any place maintained for the sale of ice cream, ice and fruit preparations or their derivatives, soda water or confections, or where any beverages of any kind are retailed for consumption on the premises; any garage, any public conveyance operated on land or water or in the air or any stations and terminals thereof; any bathhouse, boardwalk, or seashore accommodation; any auditorium, meeting place, or hall; any theatre, motion-picture house, music hall, roof garden, skating rink, swimming pool, amusement and recreation park, fair, bowling alley, gymnasium, shooting gallery, billiard and pool parlor, or other place of amusement; any comfort station; any dispensary, clinic, or hospital; any public library; and any kindergarten, primary and secondary school, trade or business school, high school, academy, college and university, or any educational institution under the supervision of the State Board of Education or the Commissioner of Education of the State of New Jersey. Nothing herein contained shall be construed to include or to apply to any institution, bona fide club, or place of accommodation, which is in its nature distinctly private; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution, and the right of a natural parent or one in loco parentis to direct the education and upbringing of a child under his is hereby affirmed; nor shall anything herein contained be construed to bar any private secondary or post-secondary school from using in good faith criteria other than race, creed, color, national origin, ancestry, gender identity or expression or affectional or sexual orientation in the admission of students.

m. “A publicly assisted housing accommodation” shall include all housing built with public funds or public assistance pursuant to P.L.1949, c.300, P.L.1941, c.213, P.L.1944, c.169,

P.L.1949, c.303, P.L.1938, c.19, P.L.1938, c.20, P.L.1946, c.52, and P.L.1949, c.184, and all housing financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof.

n. The term “real property” includes real estate, lands, tenements and hereditaments, corporeal and incorporeal, and leaseholds, provided, however, that, except as to publicly assisted housing accommodations, the provisions of this act shall not apply to the rental: (1) of a single apartment or flat in a two-family dwelling, the other occupancy unit of which is occupied by the owner as a residence; or (2) of a room or rooms to another person or persons by the owner or occupant of a one-family dwelling occupied by the owner or occupant as a residence at the time of such rental. Nothing herein contained shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised, or controlled by or in connection with a religious organization, in the sale, lease, or rental of real property, from limiting admission to or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained. Nor does any provision under this act regarding discrimination on the basis of familial status apply with respect to housing for older persons.

o. “Real estate broker” includes a person, firm, or corporation who, for a fee, commission, or other valuable consideration, or by reason of promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase, or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate, or solicits for prospective purchasers or assists or directs in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting, or auctioning of any real estate, or negotiates, or offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon or transfer of any real estate for others; or any person who, for pecuniary gain or expectation of pecuniary gain conducts a public or private competitive sale of lands or any interest in lands. In the sale of lots, the term “real estate broker” shall also include any person, partnership, association, or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange,

or offer or attempt or agree to negotiate the sale or exchange, of any such lot or parcel of real estate.

p. “Real estate salesperson” includes any person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed by and operates under the supervision of a licensed real estate broker to sell or offer to sell, buy or offer to buy or negotiate the purchase, sale, or exchange of real estate, or offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate, or to lease or rent, or offer to lease or rent any real estate for others, or to collect rents for the use of real estate, or to solicit for prospective purchasers or lessees of real estate, or who is employed by a licensed real estate broker to sell or offer to sell lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise to sell real estate, or any parts thereof, in lots or other parcels.

q. “Disability” means physical or sensory disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, muteness or speech impairment, or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or any mental, psychological, or developmental disability, including autism spectrum disorders, resulting from anatomical, psychological, physiological, or neurological conditions which prevents the typical exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques. Disability shall also mean AIDS or HIV infection.

r. “Blind person” or “person who is blind” means any individual whose central visual acuity does not exceed 20/200 in the better eye with correcting lens or whose visual acuity is better than 20/200 if accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

s. “Guide dog” means a dog used to assist persons who are deaf, or which is fitted with a special harness so as to be suitable as an aid to the mobility of a person who is blind, and is used by a person who is blind and has satisfactorily completed a specific course of training in the use of such a dog, and has been trained by an organization generally recognized by agencies involved

in the rehabilitation of persons with disabilities, including, but not limited to, those persons who are blind or deaf, as reputable and competent to provide dogs with training of this type.

t. “Guide or service dog trainer” means any person who is employed by an organization generally recognized by agencies involved in the rehabilitation of persons with disabilities, including, but not limited to, those persons who are blind, have visual impairments, or are deaf or have hearing impairments, as reputable and competent to provide dogs with training, as defined in this section, and who is actually involved in the training process.

u. “Housing accommodation” means any publicly assisted housing accommodation or any real property, or portion thereof, which is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more persons, but shall not include any single family residence the occupants of which rent, lease, or furnish for compensation not more than one room therein.

v. “Public facility” means any place of public accommodation and any street, highway, sidewalk, walkway, public building, and any other place or structure to which the general public is regularly, normally, or customarily permitted or invited.

w. “Deaf person” or “person who is deaf” means any person whose hearing is so severely impaired that the person is unable to hear and understand conversational speech through the unaided ear alone, and who must depend primarily on an assistive listening device or visual communication such as writing, lip reading, sign language, and gestures.

x. “Atypical hereditary cellular or blood trait” means sickle cell trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic fibrosis trait.

y. “Sickle cell trait” means the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin S (sickle hemoglobin) as defined by standard chemical and physical analytic techniques, including electrophoresis; and the proportion of hemoglobin A is greater than the proportion of hemoglobin S or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A₂, hemoglobin F) in the normal proportions by standard chemical and physical analytic tests.

z. “Hemoglobin C trait” means the condition wherein the major natural hemoglobin components present in the blood of the individual are hemoglobin A (normal) and hemoglobin C as defined by standard chemical and physical analytic techniques, including electrophoresis; and

the proportion of hemoglobin A is greater than the proportion of hemoglobin C or one natural parent of the individual is shown to have only normal hemoglobin components (hemoglobin A, hemoglobin A2, hemoglobin F) in normal proportions by standard chemical and physical analytic tests.

aa. “Thalassemia trait” means the presence of the thalassemia gene which in combination with another similar gene results in the chronic hereditary disease Cooley’s anemia.

bb. “Tay-Sachs trait” means the presence of the Tay-Sachs gene which in combination with another similar gene results in the chronic hereditary disease Tay-Sachs.

cc. “Cystic fibrosis trait” means the presence of the cystic fibrosis gene which in combination with another similar gene results in the chronic hereditary disease cystic fibrosis.

dd. “Service dog” means any dog individually trained to the requirements of a person with a disability including, but not limited to minimal protection work, rescue work, pulling a wheelchair or retrieving dropped items. This term shall include a “seizure dog” trained to alert or otherwise assist persons with epilepsy or other seizure disorders.

ee. “Qualified Medicaid applicant” means an individual who is a qualified applicant pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

ff. “AIDS” means acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the United States Public Health Service.

gg. “HIV infection” means infection with the human immunodeficiency virus or any other related virus identified as a probable causative agent of AIDS.

hh. “Affectional or sexual orientation” means male or female heterosexuality, homosexuality, or bisexuality by inclination, practice, identity, or expression, having a history thereof or being perceived, presumed, or identified by others as having such an orientation.

ii. “Heterosexuality” means affectional, emotional, or physical attraction or behavior which is primarily directed towards persons of the other gender.

jj. “Homosexuality” means affectional, emotional, or physical attraction or behavior which is primarily directed towards persons of the same gender.

kk. “Bisexuality” means affectional, emotional, or physical attraction or behavior which is directed towards persons of either gender.

ll. “Familial status” means being the natural parent of a child, the adoptive parent of a child, the resource family parent of a child, having a “parent and child relationship” with a child

as defined by State law, or having sole or joint legal or physical custody, care, guardianship, or visitation with a child, or any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

mm. “Housing for older persons” means housing:

(1) provided under any State program that the Attorney General determines is specifically designed and operated to assist persons who are elderly (as defined in the State program); or provided under any federal program that the United States Department of Housing and Urban Development determines is specifically designed and operated to assist persons who are elderly (as defined in the federal program); or

(2) intended for, and solely occupied by, persons 62 years of age or older; or

(3) intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this paragraph, the Attorney General shall adopt regulations which require at least the following factors:

(a) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

(b) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

(c) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

Housing shall not fail to meet the requirements for housing for older persons by reason of: persons residing in such housing as of September 13, 1988 not meeting the age requirements of this subsection, provided that new occupants of such housing meet the age requirements of this subsection; or unoccupied units, provided that such units are reserved for occupancy by persons who meet the age requirements of this subsection.

nn. “Genetic characteristic” means any inherited gene or chromosome, or alteration thereof, that is scientifically or medically believed to predispose an individual to a disease, disorder, or syndrome, or to be associated with a statistically significant increased risk of development of a disease, disorder, or syndrome.

oo. “Genetic information” means the information about genes, gene products, or inherited characteristics that may derive from an individual or family member.

pp. “Genetic test” means a test for determining the presence or absence of an inherited genetic characteristic in an individual, including tests of nucleic acids such as DNA, RNA, and mitochondrial DNA, chromosomes, or proteins in order to identify a predisposing genetic characteristic.

qq. “Domestic partnership” means a domestic partnership established pursuant to section 4 of P.L.2003, c.246 (C.26:8A-4).

rr. “Gender identity or expression” means having or being perceived as having a gender related identity or expression whether or not stereotypically associated with a person’s assigned sex.

ss. “Civil Union” means a legally recognized union of two eligible individuals established pursuant to R.S.37:1-1 et seq. and P.L.2006, c.103 (C.37:1-28 et al.).

tt. “Premium wages” means additional remuneration for night, weekend, or holiday work, or for standby or irregular duty.

uu. “Premium benefit” means an employment benefit, such as seniority, group life insurance, health insurance, disability insurance, sick leave, annual leave, or an educational or pension benefit that is greater than the employment benefit due the employee for an equivalent period of work performed during the regular work schedule of the employee.

vv. “Race” is inclusive of traits historically associated with race, including, but not limited to, hair texture, hair type, and protective hairstyles.

ww. “Protective hair styles” includes, but is not limited to, such hairstyles as braids, locks, and twists.

xx. “Family member” means a child, parent, parent-in-law, sibling, grandparent, grandchild, spouse, domestic partner, or one partner in a civil union couple, or any other individual related by blood to the person, and any other individual that the person shows to have a close association with the person which is the equivalent of a family relationship.

yy. “Domestic work” means services related to the care of persons in private residences or maintenance of private residences or their premises, including, but not limited to, services performed by a nanny, au pair, babysitter, house cleaner, housekeeper, maid, caretaker, home care

worker, cook, chef, butler, gardener, or household manager; provided, however, that “domestic work” shall not include:

(1) any such services provided by a parent, grandparent, spouse, sibling, child, or other immediate family member of the employer; or

(2) services limited to casual and occasional house- or pet-sitting duties performed when members of the household are not on the premises.

zz. “Intern” means an individual who performs services for an employer on a temporary basis whose work:

(1) provides training or supplements training given in an educational environment such that the employability of the individual performing the work may be enhanced;

(2) provides experience for the benefit of the individual performing the work; and

(3) is performed under the supervision of existing staff.

The term “intern” shall include individuals without regard to whether the employer pays them a salary or wage.

(cf: P.L.2019, c.436, s.2)

7. Section 11 of P.L.1945, c.169 (C.10:5-12) is amended to read:

11. It shall be an unlawful employment practice, or, as the case may be, an unlawful discrimination:

a. For an employer, because of the race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy or breastfeeding, sex, gender identity or expression, disability or atypical hereditary cellular or blood trait of any individual, or because of the liability for service in the Armed Forces of the United States or the nationality of any individual, or because of the refusal to submit to a genetic test or make available the results of a genetic test to an employer, to refuse to hire or employ or to bar or to discharge or require to retire, unless justified by lawful considerations other than age, from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment; provided, however, it shall not be an unlawful employment practice to refuse to accept for employment an applicant who has received a notice of induction or orders to report for active duty in the armed forces; provided further that nothing herein contained shall be construed to bar an employer from

refusing to accept for employment any person on the basis of sex in those certain circumstances where sex is a bona fide occupational qualification, reasonably necessary to the normal operation of the particular business or enterprise; provided further that nothing herein contained shall be construed to bar an employer from refusing to accept for employment or to promote any person over 70 years of age; provided further that it shall not be an unlawful employment practice for a club exclusively social or fraternal to use club membership as a uniform qualification for employment, or for a religious association or organization to utilize religious affiliation as a uniform qualification in the employment of clergy, religious teachers or other employees engaged in the religious activities of the association or organization, or in following the tenets of its religion in establishing and utilizing criteria for employment of an employee; and provided further, that it shall not be an unlawful employment practice to require the retirement of any employee who, for the two-year period immediately before retirement, is employed in a bona fide executive or a high policy-making position, if that employee is entitled to an immediate non-forfeitable annual retirement benefit from a pension, profit sharing, savings or deferred retirement plan, or any combination of those plans, of the employer of that employee which equals in the aggregate at least \$27,000.00; and provided further that an employer may restrict employment to citizens of the United States where such restriction is required by federal law or is otherwise necessary to protect the national interest.

The provisions of subsections a. and b. of section 57 of P.L.2003, c.246 (C.34:11A-20), and the provisions of section 58 of P.L.2003, c.246 (C.26:8A-11), shall not be deemed to be an unlawful discrimination under P.L.1945, c.169 (C.10:5-1 et seq.).

For purposes of claims brought under this subsection alleging that an employer is liable for an unlawful employment practice because an employee was subjected to sexual harassment or unlawful harassment based on any other category protected by this subsection, the definition of “employer” shall include any person who employs an individual to perform domestic work in their private residence; who employs an individual to perform domestic work in the private residence of a family member; or who is 18 years of age or older and resides in a private residence in which an individual performs domestic work. For purposes of such claims brought by an employee who performs domestic work, it shall also be an unlawful employment practice for an employer to allow any family member or member of their household, regardless of age, to engage in sexual harassment or unlawful harassment based on any other category protected by this subsection, or

for an employer to keep or request to keep permanent or continuing possession of the employee's passport or other identifying documents.

For the purposes of this subsection, a “bona fide executive” is a top level employee who exercises substantial executive authority over a significant number of employees and a large volume of business. A “high policy-making position” is a position in which a person plays a significant role in developing policy and in recommending the implementation thereof.

For the purposes of this subsection, an unlawful employment practice occurs, with respect to discrimination in compensation or in the financial terms or conditions of employment, each occasion that an individual is affected by application of a discriminatory compensation decision or other practice, including, but not limited to, each occasion that wages, benefits, or other compensation are paid, resulting in whole or in part from the decision or other practice.

In addition to any other relief authorized by the “Law Against Discrimination,” P.L.1945, c.169 (C.10:5-1 et seq.) for discrimination in compensation or in the financial terms or conditions of employment, liability shall accrue and an aggrieved person may obtain relief for back pay for the entire period of time , except not more than six years, in which the violation with regard to discrimination in compensation or in the financial terms or conditions of employment has been continuous, if the violation continues to occur within the statute of limitations.

Nothing in this subsection shall prohibit the application of the doctrine of “continuing violation” or the “discovery rule” to any appropriate claim as those doctrines currently exist in New Jersey common law. It shall be an unlawful employment practice to require employees or prospective employees to consent to a shortened statute of limitations or to waive any of the protections provided by the “Law Against Discrimination,” P.L.1945, c.169 (C.10:5-1 et seq.).

b. For a labor organization, because of the race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, gender identity or expression, disability, pregnancy or breastfeeding, or sex of any individual, or because of the liability for service in the Armed Forces of the United States or nationality of any individual, to exclude or to expel from its membership such individual or to discriminate in any way against any of its members, against any applicant for, or individual included in, any apprentice or other training program or against any employer or any individual employed by an employer; provided, however, that nothing herein contained shall be construed to bar a labor organization from excluding from its apprentice or other training programs any person on the basis of sex in

those certain circumstances where sex is a bona fide occupational qualification reasonably necessary to the normal operation of the particular apprentice or other training program.

c. For any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment, or to make an inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, gender identity or expression, nationality, pregnancy or breastfeeding, or sex or liability of any applicant for employment for service in the Armed Forces of the United States, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification.

d. For any person to take reprisals against any person because that person has opposed any practices or acts forbidden under this act or because that person has sought legal advice regarding rights under this act, shared relevant information with legal counsel, shared information with a governmental entity, or filed a complaint, testified or assisted in any proceeding under this act or to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this act.

e. For any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this act, or to attempt to do so.

f. (1) For any owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodation directly or indirectly to unlawfully refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privileges thereof, or to discriminate against any person in the furnishing thereof, or directly or indirectly to publish, circulate, issue, display, post or mail any written or printed communication, notice, or advertisement to the effect that any of the accommodations, advantages, facilities, or privileges of any such place will be refused, withheld from, or denied to any person on account of the race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States or nationality of such person, or that the patronage or custom thereof of any person of any particular race, creed, color,

national origin, ancestry, marital status, civil union status, domestic partnership status, pregnancy or breastfeeding status, sex, gender identity or expression, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States or nationality is unwelcome, objectionable or not acceptable, desired or solicited, and the production of any such written or printed communication, notice or advertisement, purporting to relate to any such place and to be made by any owner, lessee, proprietor, superintendent or manager thereof, shall be presumptive evidence in any action that the same was authorized by such person; provided, however, that nothing contained herein shall be construed to bar any place of public accommodation which is in its nature reasonably restricted exclusively to individuals of one sex, and which shall include but not be limited to any summer camp, day camp, or resort camp, bathhouse, dressing room, swimming pool, gymnasium, comfort station, dispensary, clinic or hospital, or school or educational institution which is restricted exclusively to individuals of one sex, provided individuals shall be admitted based on their gender identity or expression, from refusing, withholding from or denying to any individual of the opposite sex any of the accommodations, advantages, facilities or privileges thereof on the basis of sex; provided further, that the foregoing limitation shall not apply to any restaurant as defined in R.S.33:1-1 or place where alcoholic beverages are served.

(2) Notwithstanding the definition of “a place of public accommodation” as set forth in subsection l. of section 5 of P.L.1945, c.169 (C.10:5-5), for any owner, lessee, proprietor, manager, superintendent, agent, or employee of any private club or association to directly or indirectly refuse, withhold from or deny to any individual who has been accepted as a club member and has contracted for or is otherwise entitled to full club membership any of the accommodations, advantages, facilities or privileges thereof, or to discriminate against any member in the furnishing thereof on account of the race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States or nationality of such person.

In addition to the penalties otherwise provided for a violation of P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2) of subsection f. of this section is the holder of an alcoholic beverage license issued under the provisions of R.S.33:1-12 for that private club or association,

the matter shall be referred to the Director of the Division of Alcoholic Beverage Control who shall impose an appropriate penalty in accordance with the procedures set forth in R.S.33:1-31.

g. For any person, including but not limited to, any owner, lessee, sublessee, assignee or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent, lease, assign, or sublease any real property or part or portion thereof, or any agent or employee of any of these:

(1) To refuse to sell, rent, lease, assign, or sublease or otherwise to deny to or withhold from any person or group of persons any real property or part or portion thereof because of race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, familial status, disability, liability for service in the Armed Forces of the United States, nationality, or source of lawful income used for rental or mortgage payments;

(2) To discriminate against any person or group of persons because of race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, familial status, disability, liability for service in the Armed Forces of the United States, nationality, or source of lawful income used for rental or mortgage payments in the terms, conditions or privileges of the sale, rental or lease of any real property or part or portion thereof or in the furnishing of facilities or services in connection therewith;

(3) To print, publish, circulate, issue, display, post or mail, or cause to be printed, published, circulated, issued, displayed, posted or mailed any statement, advertisement, publication or sign, or to use any form of application for the purchase, rental, lease, assignment or sublease of any real property or part or portion thereof, or to make any record or inquiry in connection with the prospective purchase, rental, lease, assignment, or sublease of any real property, or part or portion thereof which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, pregnancy or breastfeeding, sex, gender identity, or expression, affectional or sexual orientation, familial status, disability, liability for service in the Armed Forces of the United States, nationality, or source of lawful income used for rental or mortgage payments, or any intent to make any such limitation, specification or discrimination, and the production of any such statement, advertisement, publicity, sign, form of application, record,

or inquiry purporting to be made by any such person shall be presumptive evidence in any action that the same was authorized by such person; provided, however, that nothing contained in this subsection shall be construed to bar any person from refusing to sell, rent, lease, assign or sublease or from advertising or recording a qualification as to sex for any room, apartment, flat in a dwelling or residential facility which is planned exclusively for and occupied by individuals of one sex to any individual of the exclusively opposite sex on the basis of sex provided individuals shall be qualified based on their gender identity or expression;

(4) To refuse to sell, rent, lease, assign, or sublease or otherwise to deny to or withhold from any person or group of persons any real property or part or portion thereof because of the source of any lawful income received by the person or the source of any lawful rent payment to be paid for the real property; or

(5) To refuse to rent or lease any real property to another person because that person's family includes children under 18 years of age, or to make an agreement, rental or lease of any real property which provides that the agreement, rental or lease shall be rendered null and void upon the birth of a child. This paragraph shall not apply to housing for older persons as defined in subsection mm. of section 5 of P.L.1945, c.169 (C.10:5-5).

h. For any person, including but not limited to, any real estate broker, real estate salesperson, or employee or agent thereof:

(1) To refuse to sell, rent, assign, lease or sublease, or offer for sale, rental, lease, assignment, or sublease any real property or part or portion thereof to any person or group of persons or to refuse to negotiate for the sale, rental, lease, assignment, or sublease of any real property or part or portion thereof to any person or group of persons because of race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, familial status, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, liability for service in the Armed Forces of the United States, disability, nationality, or source of lawful income used for rental or mortgage payments, or to represent that any real property or portion thereof is not available for inspection, sale, rental, lease, assignment, or sublease when in fact it is so available, or otherwise to deny or withhold any real property or any part or portion of facilities thereof to or from any person or group of persons because of race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status,

familial status, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States, or;

(2) To discriminate against any person because of race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, familial status, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States, nationality, or source of lawful income used for rental or mortgage payments in the terms, conditions or privileges of the sale, rental, lease, assignment or sublease of any real property or part or portion thereof or in the furnishing of facilities or services in connection therewith;

(3) To print, publish, circulate, issue, display, post, or mail, or cause to be printed, published, circulated, issued, displayed, posted or mailed any statement, advertisement, publication or sign, or to use any form of application for the purchase, rental, lease, assignment, or sublease of any real property or part or portion thereof or to make any record or inquiry in connection with the prospective purchase, rental, lease, assignment, or sublease of any real property or part or portion thereof which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, familial status, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States, nationality, or source of lawful income used for rental or mortgage payments or any intent to make any such limitation, specification or discrimination, and the production of any such statement, advertisement, publicity, sign, form of application, record, or inquiry purporting to be made by any such person shall be presumptive evidence in any action that the same was authorized by such person; provided, however, that nothing contained in this subsection h., shall be construed to bar any person from refusing to sell, rent, lease, assign or sublease or from advertising or recording a qualification as to sex for any room, apartment, flat in a dwelling or residential facility which is planned exclusively for and occupied exclusively by individuals of one sex to any individual of the opposite sex on the basis of sex, provided individuals shall be qualified based on their gender identity or expression;

(4) To refuse to sell, rent, lease, assign, or sublease or otherwise to deny to or withhold from any person or group of persons any real property or part or portion thereof because of the

source of any lawful income received by the person or the source of any lawful rent payment to be paid for the real property; or

(5) To refuse to rent or lease any real property to another person because that person's family includes children under 18 years of age, or to make an agreement, rental or lease of any real property which provides that the agreement, rental or lease shall be rendered null and void upon the birth of a child. This paragraph shall not apply to housing for older persons as defined in subsection mm. of section 5 of P.L.1945, c.169 (C.10:5-5).

i. For any person, bank, banking organization, mortgage company, insurance company or other financial institution, lender or credit institution involved in the making or purchasing of any loan or extension of credit, for whatever purpose, whether secured by residential real estate or not, including but not limited to financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any real property or part or portion thereof or any agent or employee thereof:

(1) To discriminate against any person or group of persons because of race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States, familial status or nationality, in the granting, withholding, extending, modifying, renewing, or purchasing, or in the fixing of the rates, terms, conditions or provisions of any such loan, extension of credit or financial assistance or purchase thereof or in the extension of services in connection therewith;

(2) To use any form of application for such loan, extension of credit or financial assistance or to make record or inquiry in connection with applications for any such loan, extension of credit or financial assistance which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States, familial status or nationality or any intent to make any such limitation, specification or discrimination; unless otherwise required by law or regulation to retain or use such information;

(3) (Deleted by amendment, P.L.2003, c.180).

(4) To discriminate against any person or group of persons because of the source of any lawful income received by the person or the source of any lawful rent payment to be paid for the real property; or

(5) To discriminate against any person or group of persons because that person's family includes children under 18 years of age, or to make an agreement or mortgage which provides that the agreement or mortgage shall be rendered null and void upon the birth of a child. This paragraph shall not apply to housing for older persons as defined in subsection mm. of section 5 of P.L.1945, c.169 (C.10:5-5).

j. For any person whose activities are included within the scope of this act to refuse to post or display such notices concerning the rights or responsibilities of persons affected by this act as the Attorney General may by regulation require.

k. For any real estate broker, real estate salesperson or employee or agent thereof or any other individual, corporation, partnership, or organization, for the purpose of inducing a transaction for the sale or rental of real property from which transaction such person or any of its members may benefit financially, to represent that a change has occurred or will or may occur in the composition with respect to race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, familial status, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States, nationality, or source of lawful income used for rental or mortgage payments of the owners or occupants in the block, neighborhood or area in which the real property is located, and to represent, directly or indirectly, that this change will or may result in undesirable consequences in the block, neighborhood or area in which the real property is located, including, but not limited to the lowering of property values, an increase in criminal or anti-social behavior, or a decline in the quality of schools or other facilities.

l. For any person to refuse to buy from, sell to, lease from or to, license, contract with, or trade with, provide goods, services or information to, or otherwise do business with any other person on the basis of the race, creed, color, national origin, ancestry, age, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, marital status, civil union status, domestic partnership status, liability for service in the Armed Forces of the United States, disability, nationality, or source of lawful income used for rental or mortgage payments of such other person or of such other person's family members, partners, members,

stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers. This subsection shall not prohibit refusals or other actions (1) pertaining to employee-employer collective bargaining, labor disputes, or unfair labor practices, or (2) made or taken in connection with a protest of unlawful discrimination or unlawful employment practices.

m. For any person to:

(1) Grant or accept any letter of credit or other document which evidences the transfer of funds or credit, or enter into any contract for the exchange of goods or services, where the letter of credit, contract, or other document contains any provisions requiring any person to discriminate against or to certify that he, she or it has not dealt with any other person on the basis of the race, creed, color, national origin, ancestry, age, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, marital status, civil union status, domestic partnership status, disability, liability for service in the Armed Forces of the United States, or nationality of such other person or of such other person's family members, partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers.

(2) Refuse to grant or accept any letter of credit or other document which evidences the transfer of funds or credit, or refuse to enter into any contract for the exchange of goods or services, on the ground that it does not contain such a discriminatory provision or certification.

The provisions of this subsection shall not apply to any letter of credit, contract, or other document which contains any provision pertaining to employee-employer collective bargaining, a labor dispute or an unfair labor practice, or made in connection with the protest of unlawful discrimination or an unlawful employment practice, if the other provisions of such letter of credit, contract, or other document do not otherwise violate the provisions of this subsection.

n. For any person to aid, abet, incite, compel, coerce, or induce the doing of any act forbidden by subsections l. and m. of section 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to do so. Such prohibited conduct shall include, but not be limited to:

(1) Buying from, selling to, leasing from or to, licensing, contracting with, trading with, providing goods, services, or information to, or otherwise doing business with any person because that person does, or agrees or attempts to do, any such act or any act prohibited by this subsection; or

(2) Boycotting, commercially blacklisting or refusing to buy from, sell to, lease from or to, license, contract with, provide goods, services or information to, or otherwise do business with any person because that person has not done or refuses to do any such act or any act prohibited by this subsection; provided that this subsection shall not prohibit refusals or other actions either pertaining to employee-employer collective bargaining, labor disputes, or unfair labor practices, or made or taken in connection with a protest of unlawful discrimination or unlawful employment practices.

o. For any multiple listing service, real estate brokers' organization or other service, organization or facility related to the business of selling or renting dwellings to deny any person access to or membership or participation in such organization, or to discriminate against such person in the terms or conditions of such access, membership, or participation, on account of race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, familial status, pregnancy or breastfeeding, sex, gender identity or expression, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States or nationality.

p. Nothing in the provisions of this section shall affect the ability of an employer to require employees to adhere to reasonable workplace appearance, grooming and dress standards not precluded by other provisions of State or federal law, except that an employer shall allow an employee to appear, groom and dress consistent with the employee's gender identity or expression.

q. (1) For any employer to impose upon a person as a condition of obtaining or retaining employment, including opportunities for promotion, advancement or transfers, any terms or conditions that would require a person to violate or forego a sincerely held religious practice or religious observance, including but not limited to the observance of any particular day or days or any portion thereof as a Sabbath or other holy day in accordance with the requirements of the religion or religious belief, unless, after engaging in a bona fide effort, the employer demonstrates that it is unable to reasonably accommodate the employee's religious observance or practice without undue hardship on the conduct of the employer's business. Notwithstanding any other provision of law to the contrary, an employee shall not be entitled to premium wages or premium benefits for work performed during hours to which those premium wages or premium benefits would ordinarily be applicable, if the employee is working during those hours only as an

accommodation to [his] the employee's religious requirements. Nothing in this subsection q. shall be construed as reducing:

(a) The number of the hours worked by the employee which are counted towards the accruing of seniority, pension or other benefits; or

(b) Any premium wages or benefits provided to an employee pursuant to a collective bargaining agreement.

(2) For an employer to refuse to permit an employee to utilize leave, as provided for in this subsection q., which is solely used to accommodate the employee's sincerely held religious observance or practice. Except where it would cause an employer to incur an undue hardship, no person shall be required to remain at [his] the person's place of employment during any day or days or portion thereof that, as a requirement of [his] the person's religion, [he] the person observes as [his] the person's Sabbath or other holy day, including a reasonable time prior and subsequent thereto for travel between [his] the person's place of employment and [his] the person's home; provided that any such absence from work shall, wherever practicable in the reasonable judgment of the employer, be made up by an equivalent amount of time and work at some other mutually convenient time, or shall be charged against any leave with pay ordinarily granted, other than sick leave, and any such absence not so made up or charged, may be treated by the employer of that person as leave taken without pay.

(3) (a) For purposes of this subsection q., "undue hardship" means an accommodation requiring unreasonable expense or difficulty, unreasonable interference with the safe or efficient operation of the workplace or a violation of a bona fide seniority system or a violation of any provision of a bona fide collective bargaining agreement.

(b) In determining whether the accommodation constitutes an undue hardship, the factors considered shall include:

(i) The identifiable cost of the accommodation, including the costs of loss of productivity and of retaining or hiring employees or transferring employees from one facility to another, in relation to the size and operating cost of the employer.

(ii) The number of individuals who will need the particular accommodation for a sincerely held religious observance or practice.

(iii) For an employer with multiple facilities, the degree to which the geographic separateness or administrative or fiscal relationship of the facilities will make the accommodation more difficult or expensive.

(c) An accommodation shall be considered to constitute an undue hardship if it will result in the inability of an employee to perform the essential functions of the position in which [he or she] the employee is employed.

(d) (i) The provisions of this subsection q. shall be applicable only to reasonable accommodations of religious observances and shall not supersede any definition of undue hardship or standards for reasonable accommodation of the disabilities of employees.

(ii) This subsection q. shall not apply where the uniform application of terms and conditions of attendance to employees is essential to prevent undue hardship to the employer. The burden of proof regarding the applicability of this subparagraph (d) shall be upon the employer.

r. For any employer to take reprisals against any employee for requesting from , discussing with, or disclosing to, any other employee or former employee of the employer, a lawyer from whom the employee seeks legal advice, or any government agency information regarding the job title, occupational category, and rate of compensation, including benefits, of the employee or any other employee or former employee of the employer, or the gender, race, ethnicity, military status, or national origin of the employee or any other employee or former employee of the employer, regardless of whether the request was responded to , or to require, as a condition of employment, any employee or prospective employee to sign a waiver, or to otherwise require an employee or prospective employee to agree, not to make those requests or disclosures. Nothing in this subsection shall be construed to require an employee to disclose such information about the employee herself to any other employee or former employee of the employer or to any authorized representative of the other employee or former employee.

For purposes of claims brought under this subsection, the definition of “employer” includes any person who employs an individual to perform domestic work in their private residence; who employs an individual to perform domestic work in the private residence of a family member; or who is 18 years of age or older and resides in a private residence in which an individual performs domestic work.

s. For an employer to treat, for employment-related purposes, a woman employee that the employer knows, or should know, is affected by pregnancy or breastfeeding in a manner less

favorable than the treatment of other persons not affected by pregnancy or breastfeeding but similar in their ability or inability to work. In addition, an employer of an employee who is a woman affected by pregnancy shall make available to the employee reasonable accommodation in the workplace, such as bathroom breaks, breaks for increased water intake, periodic rest, assistance with manual labor, job restructuring or modified work schedules, and temporary transfers to less strenuous or hazardous work, for needs related to the pregnancy when the employee, based on the advice of her physician, requests the accommodation, and, in the case of an employee breast feeding her infant child, the accommodation shall include reasonable break time each day to the employee and a suitable room or other location with privacy, other than a toilet stall, in close proximity to the work area for the employee to express breast milk for the child, unless the employer can demonstrate that providing the accommodation would be an undue hardship on the business operations of the employer. The employer shall not in any way penalize the employee in terms, conditions or privileges of employment for requesting or using the accommodation. Workplace accommodation provided pursuant to this subsection and paid or unpaid leave provided to an employee affected by pregnancy or breastfeeding shall not be provided in a manner less favorable than accommodations or leave provided to other employees not affected by pregnancy or breastfeeding but similar in their ability or inability to work. This subsection shall not be construed as otherwise increasing or decreasing any employee's rights under law to paid or unpaid leave in connection with pregnancy or breastfeeding.

For the purposes of this section "pregnancy or breastfeeding" means pregnancy, childbirth, and breast feeding or expressing milk for breastfeeding, or medical conditions related to pregnancy, childbirth, or breastfeeding, including recovery from childbirth.

For the purposes of this subsection, in determining whether an accommodation would impose undue hardship on the operation of an employer's business, the factors to be considered include: the overall size of the employer's business with respect to the number of employees, number and type of facilities, and size of budget; the type of the employer's operations, including the composition and structure of the employer's workforce; the nature and cost of the accommodation needed, taking into consideration the availability of tax credits, tax deductions, and outside funding; and the extent to which the accommodation would involve waiver of an essential requirement of a job as opposed to a tangential or non-business necessity requirement.

t. For an 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. An employer who is paying a rate of compensation in violation of this subsection shall not reduce the rate of compensation of any employee in order to comply with this subsection. An employer may pay a different rate of compensation only if the employer demonstrates that the differential is made pursuant to a seniority system, a merit system, or the employer demonstrates:

(1) That the differential is based on one or more legitimate, bona fide factors other than the characteristics of members of the protected class, such as training, education or experience, or the quantity or quality of production;

(2) That the factor or factors are not based on, and do not perpetuate, a differential in compensation based on sex or any other characteristic of members of a protected class;

(3) That each of the factors is applied reasonably;

(4) That one or more of the factors account for the entire wage differential; and

(5) That the factors are job-related with respect to the position in question and based on a legitimate business necessity. A factor based on business necessity shall not apply if it is demonstrated that there are alternative business practices that would serve the same business purpose without producing the wage differential.

Comparisons of wage rates shall be based on wage rates in all of an employer's operations or facilities. For the purposes of this subsection, "member of a protected class" means an employee who has one or more characteristics, including race, creed, color, national origin, nationality, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy, sex, gender identity or expression, disability or atypical hereditary cellular or blood trait of any individual, or liability for service in the armed forces, for which subsection a. of this section prohibits an employer from refusing to hire or employ or barring or discharging or requiring to retire from employment or discriminating against the individual in compensation or in terms, conditions or privileges of employment.

(cf: P.L.2019, c.436, s.3)

Nothing in this subsection shall be interpreted to preclude employers from engaging interns in unpaid positions or paying interns at a different rate than other staff, provided, however, that if

an employer provides compensation to interns, it may not provide such compensation to interns who are members of a protected class at a rate less than interns who are not members of the protected class for substantially similar work, when viewed as a composite of skill, effort and responsibility.

8. Section 1 of P.L.2019, c.39 (C.10:5-12.7) is amended to read as follows:

1. a. A provision in any employment contract, including any contract for the performance of domestic work, that waives any substantive or procedural right or remedy relating to a claim of discrimination, retaliation, or harassment shall be deemed against public policy and unenforceable.

b. No right or remedy under the “Law Against Discrimination,” P.L.1945, c.169 (C.10:5-1 et seq.) or any other statute or case law shall be prospectively waived.

c. This section shall not apply to the terms of any collective bargaining agreement between an employer and the collective bargaining representative of the employees.

(cf: P.L.2019, c.39, s.1)

9. Section 2 of P.L.2019, c.39 (C.10:5-12.8) is amended to read as follows:

2. a. A provision in any employment contract or settlement agreement which has the purpose or effect of concealing the details relating to a claim of discrimination, retaliation, or harassment (hereinafter referred to as a “non-disclosure provision”) shall be deemed against public policy and unenforceable against a current or former employee (hereinafter referred to as an “employee”) who is a party to the contract or settlement. If the employee publicly reveals sufficient details of the claim so that the employer is reasonably identifiable, then the non-disclosure provision shall also be unenforceable against the employer.

For purposes of claims brought under this subsection, the definition of “employer” includes any person who employs an individual to perform domestic work in their private residence; who employs an individual to perform domestic work in the private residence of a family member; or who is 18 years of age or older and resides in a private residence in which an individual performs domestic work.

b. Every settlement agreement resolving a discrimination, retaliation, or harassment claim by an employee against an employer shall include a bold, prominently placed notice that although the parties may have agreed to keep the settlement and underlying facts confidential, such a

provision in an agreement is unenforceable against the employer if the employee publicly reveals sufficient details of the claim so that the employer is reasonably identifiable.

For purposes of claims brought under this subsection, the definition of “employer” includes any person who employs an individual to perform domestic work in their private residence; who employs an individual to perform domestic work in the private residence of a family member; or who is 18 years of age or older and resides in a private residence in which an individual performs domestic work.

c. Notwithstanding any other provision of law to the contrary, this section shall not be construed to prohibit an employer from requiring an employee to sign an agreement:

(1) in which the employee agrees not to enter into competition with the employer during or after employment; or

(2) in which the employee agrees not to disclose proprietary information, which includes only non-public trade secrets, business plan and customer information.

(cf: P.L.2019, c.39, s.2)

10. Section 5 of P.L.2019, c.39 (C.10:5-12.11) is amended to read as follows:

5. Any person claiming to be aggrieved by a violation of P.L.2019, c.39 (C.10:5-12.7 et seq.) may initiate suit in Superior Court. An action pursuant to this section shall be commenced within [two] three years [next] after the cause of any such action shall have accrued. All remedies available in common law tort actions shall be available to prevailing plaintiffs. These remedies are in addition to any provided by P.L.2019, c.39 (C.10:5-12.7 et seq.) or any other statute. A prevailing plaintiff shall be awarded reasonable [attorney] attorney’s fees and costs.

(cf: P.L.2019, c.39, s.5)

11. Section 12 of P.L.1945, c.169 (C.10:5-13) is amended to read as follows:

12. a. (1) Any person claiming to be aggrieved by an unlawful employment practice or an unlawful discrimination may, personally or by an attorney-at-law, make, sign, and file with the division a verified complaint in writing which shall state the name and address of the person, employer, labor organization, employment agency, owner, lessee, proprietor, manager, superintendent, or agent alleged to have committed the unlawful employment practice or unlawful discrimination complained of and which shall set forth the particulars thereof and shall contain

such other information as may be required by the division. Such complaint shall be filed with the division or in any municipal office pursuant to P.L.1945, c. 169 (C.10:5-1 et seq.) within one year after the alleged unlawful employment practice or unlawful discrimination based on any other category protected by P.L.1945, c. 169 (C.10:5-1 et seq.). Upon receipt of the complaint, the division shall notify the complainant on a form promulgated by the director of the division and approved by the Attorney General of the complainant's rights under P.L.1945, c.169 (C.10:5-1 et seq.), including the right to file a complaint in the Superior Court to be heard before a jury; of the jurisdictional limitations of the division; and any other provisions of P.L.1945, c.169 (C.10:5-1 et seq.), without interpretation, that may apply to the complaint. The Commissioner of Labor and Workforce Development, the Attorney General, the director, or the Commissioner of Education may, in like manner, make, sign, and file such complaint. Any employer whose employees, or some of them, refuse, or threaten to refuse to cooperate with the provisions of P.L.1945, c.169 (C.10:5-1 et seq.), may file with the division a verified complaint asking for assistance by conciliation or other remedial action.

(2) Any complainant, including any person claiming to be aggrieved by an unlawful employment practice or an unlawful discrimination, the Attorney General, the director, the Commissioner of Labor and Workforce Development, or the Commissioner of Education, may initiate suit in Superior Court under P.L.1945, c.169 (C.10:5-1 et seq.) without first filing a complaint with the division or any municipal office. Any such action, other than an action by the Attorney General or the director, shall be commenced within three years after the cause of that action shall have accrued. In such proceedings:

(a) Upon the application of any party, a jury trial shall be directed to try the validity of any claim under P.L.1945, c.169 (C.10:5-1 et seq.) specified in the suit.

(b) All remedies available in common law tort actions shall be available to prevailing plaintiffs, and if the Attorney General or the director is a prevailing plaintiff, those remedies shall be available on behalf of named or unnamed victims. If the suit seeks relief for one or more unnamed members of a protected class, the Attorney General or the director shall have the discretion to settle the suit on such terms as the Attorney General or the director deems appropriate. The injunctive relief set forth in section 16 of P.L.1945, c.169 (C.10:5-17) shall also be available to prevailing plaintiffs. These remedies are in addition to any other provided by P.L.1945, c.169 (C.10:5-1 et seq.) or any other statute.

(c) In addition to the remedies set forth in subparagraph (b) of this paragraph, the Attorney General or director may seek and obtain from the Superior Court penalties pursuant to section 2 of P.L.1983, c.412 (C.10:5-14.1a). In the alternative, in lieu of these penalties, the Attorney General or director may seek and obtain punitive damages payable to the State upon a finding that the provisions of P.L.1995, c.142 (C.2A:15-5.9 et al.) are satisfied.

Prosecution of such suit in Superior Court under P.L.1945, c.169 (C.10:5-1 et seq.) shall bar the filing of a complaint with the division or any municipal office during the pendency of any such suit.

(d) If a jury or court determines that an employer has committed an unlawful employment practice prohibited by subsection r. or t. of section 11 of P.L.1945, c.169 (C.10:5-12), the judge shall award three times any monetary damages to the person or persons aggrieved by the violation.

(e) Notwithstanding the provisions of section 6 of P.L.1979, c.404 (C.10:5-27.1), if the Attorney General or the director is a prevailing plaintiff, the court shall award reasonable attorney's fees and litigation and investigation costs.

b. At any time after 180 days from the filing of a complaint with the division, a complainant may file a request with the division to present the action personally or through counsel to the Office of Administrative Law. Upon such request, the director of the division shall file the action with the Office of Administrative Law, provided that no action may be filed with the Office of Administrative Law where the director of the division has found that no probable cause exists to credit the allegations of the complaint or has otherwise dismissed the complaint.

c. A party to an action based upon a violation of P.L.1945, c.169 (C.10:5-1 et seq.) shall mail a copy of the initial pleadings or claims, amended pleadings or claims, counterclaims, briefs, and legal memoranda to the division at the same time as filing such documents with the Office of Administrative Law or the court. Upon application to the Office of Administrative Law or to the court wherein the matter is pending, the division shall be permitted to intervene.

(P.L.2019, c.436, s.5)

12. Section 17 of P.L.1945, c.169 (C.10:5-18) is amended to read as follows:

The Attorney General shall establish rules of practice to govern, expedite and effectuate the foregoing procedure and [his] the Attorney General's own actions thereunder. Any complaint filed in the division or in any municipal office pursuant to this act must be so filed within [180

days] one year after the alleged act of discrimination or from the discovery of the alleged act of discrimination.

(cf: P.L.1979, c.404, s.4)

13. This act shall take effect of the first day of the third month following enactment.