



# DIVISION ON **CIVIL RIGHTS**

## **Guidance on the Diane B. Allen Equal Pay Act March 2020**

On April 24, 2018, Governor Phil Murphy signed into law the Diane B. Allen Equal Pay Act (Equal Pay Act).<sup>1</sup> The Equal Pay Act expanded upon the equal pay protections that already existed in the New Jersey Law Against Discrimination (LAD), and has been called “the most sweeping equal pay legislation in the nation.”<sup>2</sup> The Act generally prohibits an employer from paying an employee who is a member of an LAD-protected class less than what it pays an employee who is not a member of that LAD-protected class for substantially similar work. By contrast, the federal Equal Pay Act, 29 U.S.C. § 206, covers only gender-based pay disparities and only requires equal pay for “equal” work, not “substantially similar” work. The new law took effect on July 1, 2018.

This enforcement guidance document summarizes the changes that the Equal Pay Act made to the LAD and explains how those changes affect employers and employees. It is broken down into two sections. The first section provides an overview of the Equal Pay Act, summarizing the Act’s main provisions. The second section contains frequently asked questions about the Act.<sup>3</sup>

### **I. OVERVIEW OF THE LAW**

The New Jersey Legislature created the New Jersey Division on Civil Rights (DCR) to enforce the New Jersey Law Against Discrimination (LAD) and to “prevent and eliminate discrimination” in the State of New Jersey. N.J.S.A. § 10:5-6.

The LAD prohibits discrimination, bias-based harassment, and retaliation in employment, housing, and places of public accommodation. It has long prohibited discrimination in compensation based on race, religion, gender, sexual orientation, gender identity or expression, national origin, disability, and other protected characteristics. N.J.S.A. § 10:5-12(a) (2017).<sup>4</sup>

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<sup>1</sup> The Equal Pay Act is available on DCR’s website at <https://www.nj.gov/oag/dcr/downloads/Equal-Pay-Act.pdf>.

<sup>2</sup> Matt Arco, *N.J. now has the strongest equal pay law in America*, NJ.com (Apr. 24, 2018), <https://www.nj.com/politics/2018/04/nj-now-has-the-strongest-equal-pay-law-in-america.html>.

<sup>3</sup> The purpose of this enforcement guidance is to clarify and explain DCR’s understanding of existing legal requirements in order to facilitate compliance with the LAD. This enforcement guidance does not impose any new or additional requirements that are not included in the LAD, does not establish any rights or obligations for any person, and will not be enforced by DCR as a substitute for enforcement of the LAD. This document does not provide legal advice and should not be treated as providing legal advice. Employees and employers with questions about the Equal Pay Act or LAD are encouraged to speak with a qualified attorney to address their specific questions.

<sup>4</sup> A notation of (2017) in a citation to the LAD signifies that the quoted language appeared in the LAD prior to the passage of the Equal Pay Act.

Notwithstanding the LAD’s protections, pay gaps still exist in New Jersey and across the country. In 2018, women in New Jersey earned only 81.3% as much as their male counterparts.<sup>5</sup> Black women nationwide earned only 80% as much as white women, and only 65% as much as white men.<sup>6</sup> Hispanic women earned only 76% as much as white women nationwide, and only 62% as much as white men.<sup>7</sup>

The Equal Pay Act made numerous changes to the LAD, with the goal of further reducing and eliminating pay disparities based on protected characteristics. Those changes include:

#### *Expanding the Remedies for Pay Discrimination*

Prior to the passage of the Equal Pay Act, Section 10:5-12(a) of the LAD already prohibited employers from discriminating “in compensation or in terms, conditions or privileges of employment” based on many protected characteristics, including “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, liability for service in the Armed Forces of the United States, nationality,” and refusing to “submit to a genetic test or make available the results of a genetic test.” N.J.S.A. § 10:5-12(a) (2017). This prohibition has long been enforceable in lawsuits brought by employees against their employers for pay discrimination. *See, e.g., Alexander v. Seton Hall University*, 204 N.J. 219 (2010).

Historically, employees could recover up to two years of back pay for successful pay discrimination claims under the LAD’s preexisting statute of limitations. *See id.* at 234-36. The Equal Pay Act, however, amended Section 10:5-12(a) to create a six-year “lookback” period, allowing an employee who establishes discrimination in compensation to recover up to six years of back pay as long as the discrimination was continuous and the most recent violation occurred within the LAD’s two-year statute of limitations. The Equal Pay Act also codified the New Jersey Supreme Court’s holding that a violation of the LAD occurs each time an employee is “affected by application of a discriminatory compensation decision or other practice,” including each time an employee receives a paycheck. N.J.S.A. § 10:5-12(a); *see Alexander*, 204 N.J. at 235.

#### *Equal Pay for Substantially Similar Work*

The Equal Pay Act also added a new subsection to the LAD, N.J.S.A § 10:5-12(t). Subsection (t) prohibits an employer from paying any employee “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.*” N.J.S.A § 10:5-12(t) (emphasis added). The protected classes for subsection (t) are the same as for subsection (a): “race, creed, color, national origin, nationality, ancestry, age, marital status, civil union status, domestic partnership status, affectional

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<sup>5</sup> U.S. Bureau of Labor Statistics, *Women’s Earnings in New Jersey – 2018*, at 1 (Dec. 2019), available at [https://www.bls.gov/regions/new-york-new-jersey/news-release/pdf/womensearnings\\_newjersey.pdf](https://www.bls.gov/regions/new-york-new-jersey/news-release/pdf/womensearnings_newjersey.pdf).

<sup>6</sup> U.S. Bureau of Labor Statistics, *BLS Reports: Highlights of Women’s Earnings in 2018*, at 3 (Nov. 2019), available at <https://www.bls.gov/opub/reports/womens-earnings/2018/pdf/home.pdf>.

<sup>7</sup> *Id.*

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.” N.J.S.A. § 10:5-12(t).

If a member of a protected class demonstrates that they are compensated less for substantially similar work than a person who is not a member of that protected class, the employer is liable under the Equal Pay Act unless it can demonstrate either:

1. That the pay differential is made *pursuant to a seniority system or a merit system*; or
2. That all five of the following are true:
  - a. “That the [pay] 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;
  - b. 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;
  - c. That each of the factors is applied reasonably;
  - d. That one or more of the factors account for the entire wage differential; and
  - e. 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.”

N.J.S.A. § 10:5-12(t).

Subsection (t) specifies that “[c]omparisons of wage rates shall be based on wage rates in all of an employer’s operations or facilities.” N.J.S.A. § 10:5-12(t). It also prevents employers from reducing anyone’s compensation in an effort to cure a violation of the Equal Pay Act. N.J.S.A. § 10:5-12(t).

### *Anti-Retaliation Provisions*

Prior to the Equal Pay Act, the LAD prohibited retaliation against any person who “opposed any practices or acts forbidden under” the LAD or who, among other things, “filed a complaint, testified or assisted in any proceeding” under the LAD. N.J.S.A. § 10:5-12(d) (2017). The Equal Pay Act broadens that protection by further prohibiting retaliation against anyone who seeks “legal advice regarding rights” under the LAD, “share[s] relevant information with legal counsel,” or “shares information with a governmental entity.” N.J.S.A. § 10:5-12(d). That applies to any rights under the LAD, not simply claims for equal pay.

Prior to the Equal Pay Act, Section 10:5-12(r) prohibited employers from retaliating against employees who requested information about: (1) job title or compensation; or (2) the “gender, race, ethnicity, military status, or national origin” of employees, when the employee requested such information for the purpose of investigating or taking legal action regarding potential pay discrimination. N.J.S.A. § 10:5-12(r) (2017).

The Equal Pay Act amends subsection (r) with respect to those protections in order to cover a broader range of conduct. The amended provision now prohibits any retaliation “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 related to job title or compensation of employees or former employees, as well as the “gender, race, ethnicity, military status, or national origin” of those employees, even if the employee’s action is unrelated to a claim for equal pay. The Equal Pay Act also prohibits employers from requiring employees to waive their right to make any such requests or disclosures. N.J.S.A. § 10:5-12(r).

### *Remedies*

An employee who establishes any violation of the LAD can receive some or all of the following remedies:

1. An order requiring the employer to cease and desist from the unlawful employment practice;
2. Lost wages and benefits;
3. Hiring, reinstatement, or promotion as appropriate, with back pay and interest;
4. Emotional distress damages;
5. Reasonable attorneys’ fees if the complainant was represented by counsel;
6. Out-of-pocket expenses associated with pursuing the complaint; and
7. Punitive damages (in cases filed in Superior Court only).

DCR may also order attorneys’ fees and affirmative relief (e.g., training, policy changes, and monitoring) and may impose statutory penalties that the respondent must pay to the State Treasury:

1. Up to \$10,000 for the first violation in a five-year period
2. Up to \$25,000 for the second violation in a five-year period
3. Up to \$50,000 for the third violation (and any additional violations) in a seven-year period.

In addition to those existing remedies under the LAD, the Equal Pay Act amends Sections 10:5-13 and 10:5-17 of the LAD to allow for treble damages (three times any monetary damages) for violations of the prohibition on unequal pay for substantially similar work in § 10:5-12(t) and for violations of the anti-retaliation prohibitions in § 10:5-12(r). If a jury finds a violation of subsection (t) or subsection (r), the judge *must* award treble damages to the plaintiff. If the Director of the Division on Civil Rights determines an employer violated subsection (t) or subsection (r), the Director may award treble damages, but is not required to do so.

### *New Reporting Requirements*

The Equal Pay Act requires any employer entering into a contract with the State of New Jersey or an instrumentality of the State for “qualifying services” or “public works” to provide to the Department of Labor and Workforce Development wage and demographic data for all employees who are employed in connection with the contract (for public works) and for all employees (for qualifying services). This requirement does not apply to employers who contract with counties, municipalities, or other local government entities. The report must contain the gender, race,

ethnicity, job category, compensation, and number of hours worked by each employee. These reporting requirements are enforced by the Commissioner of the Department of Labor and Workforce Development. Instructions for complying with them are available at: [https://nj.gov/labor/forms\\_pdfs/equalpayact/MW-564%20\(3-19\)%20Instructions.pdf](https://nj.gov/labor/forms_pdfs/equalpayact/MW-564%20(3-19)%20Instructions.pdf).

## **II. FREQUENTLY ASKED QUESTIONS**

### **A. Covered Employers**

#### **Q: Who must comply with the Equal Pay Act?**

The Equal Pay Act covers nearly all employers in New Jersey. An employer need not have a minimum number of employees for the Equal Pay Act to apply—even one employee in New Jersey is enough. The Equal Pay Act does not apply to the federal government as an employer, but it does apply to the State and to municipal governments.

#### **Q: Does the Equal Pay Act apply to employers located outside of New Jersey?**

Yes. The employer need not be located in New Jersey for the Equal Pay Act to apply, as long as it has employees with a primary place of work in New Jersey.

### **B. Covered Employees**

#### **Q: Which employees are covered by the Equal Pay Act?**

Nearly all employees are covered by the Equal Pay Act, including full-time, part-time, seasonal, per-diem, and temporary employees. However, the Equal Pay Act does not apply to “any individual employed in the domestic service of any person” or any federal employee.

#### **Q: Does the Equal Pay Act apply to government employees?**

Yes. The Equal Pay Act applies to state, county and municipal employees. It does not apply to employees of the federal government.

#### **Q: Does the Equal Pay Act apply to employees who live outside of New Jersey?**

Employees can bring a claim under the Equal Pay Act as long as they have a primary place of work in New Jersey. Employees who satisfy this requirement are not excluded from Equal Pay Act protection if they live outside of New Jersey. So, for example, an employee who lives in Pennsylvania but works in New Jersey several days a week is protected by the Equal Pay Act.

#### **Q: What are protected characteristics under the Equal Pay Act?**

The Equal Pay Act’s protected characteristics are 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, atypical hereditary cellular or blood trait of any individual, or liability for service in the armed forces.

### **C. Requirement of Equal Pay for Substantially Similar Work**

**Q: Does the Equal Pay Act prohibit only unequal pay for equal work?**

No. The Equal Pay Act prohibits an employer from paying any employee who is a member of a protected class less compensation than an employee who is not a member of the protected class for substantially similar work.

**Q: What constitutes compensation under the Equal Pay Act?**

Compensation includes an employee’s base wages, commissions, overtime pay, bonus pay, merit pay, and stock options. Compensation also includes cash and non-cash benefits, including but not limited to insurance, vacation time, and retirement funding.

**Q: What does “substantially similar” work mean?**

Substantially similar work is evaluated as a combination of the skill, effort, and responsibility required to perform an employee’s job duties. Therefore, two employees perform “substantially similar work” when their job duties require a similar degree of skill, effort, and responsibility. When determining whether work is substantially similar, all three factors should be examined together. Work is substantially similar where, on balance, the jobs are substantially similar, but they need not be identical. Minor differences in skill, effort, and responsibility do not preclude work from being substantially similar.

**Q: What does “skill” mean in this context?**

Skill refers to the experience, ability, education, and training required to perform a set of job duties. This term refers to the skills actually necessary to perform a job, as opposed to the skills a particular employee just happens to have. Therefore, skills not necessary to perform a particular job are not relevant to determining whether jobs are substantially similar. For example, for an accountant who happens to have a Master’s Degree in Literature, knowledge of English Literature typically would not be a skill required to perform the job because it is typically not related to an accountant’s job duties.

**Q: What does “effort” mean in this context?**

Effort refers to the requirements of a job as a whole and takes into account the amount of physical or mental exertion required to complete a job. An employee’s working conditions may also be relevant to the amount of effort required to perform a job.

For example:

- A job that requires an employee to be on her feet all day would likely require more physical effort than a more sedentary job.
- A job requiring employees to work long hours or meet late-breaking deadlines may require more mental exertion than a job that does not.

**Q: What does “responsibility” mean in this context?**

Responsibility refers to the job duties required and to the degree of discretion and accountability required to perform the job. An employee who supervises others, makes high-level decisions, or enacts policies and procedures may have different responsibilities than an employee who does not.

However, minor or occasional differences in responsibilities will not prevent jobs from being substantially similar.

For example:

- An executive chef likely has more responsibility than a line cook because the executive chef has more discretion, supervises others, and makes high-level decisions.
- An employee who supervises a team and has final authority to approve the written documents the team produces likely has more responsibility than an employee on the team who conducts initial research to help in drafting the documents.
- At a large department store, salespeople generally are not responsible for sweeping the floors. However, the fact that a sales clerk in the home goods department is occasionally asked to sweep up if a customer breaks a glass would only be a minor or occasional difference in responsibility; that minor difference would not prevent her from being considered comparable to sales clerks in other departments if their duties were otherwise substantially similar.

**Q: Do two positions have to be identical as a composite of skill, effort, and responsibility in order to be “substantially similar” under the Equal Pay Act?**

No. Neither job title nor actual work performed have to be identical, and minor differences in skill, effort, and responsibility do not preclude work from being substantially similar.

For example:

- In a school setting, janitorial and food service jobs may be substantially similar in terms of skill, effort and responsibility because both may involve substantial amounts of lifting and cleaning, even though the job duties are not exactly the same.
- Attorneys reviewing contracts versus attorneys litigating cases may be performing substantially similar work in terms of skill, effort, and responsibility even though the job duties are not exactly the same.

**Q: Can an employer rely solely on job titles or job descriptions to determine which positions are substantially similar?**

No. What is most important to determining whether two employees perform substantially similar work is the work itself, viewed as a composite of skill, effort, and responsibility. Job titles and job descriptions do not necessarily keep pace with the actual nature of duties and responsibilities performed by employees. Accordingly, job title and job description are not determinative, although they may be relevant to assessing whether two jobs require a similar degree of skill, effort, and responsibility. For example, a secretary and executive assistant might perform substantially similar work even though their job titles are different and their job duties may not be exactly the same.

**Q: If an employer discovers that it is paying an employee in a protected class less than an employee outside of the protected class who performs substantially similar work, may it reduce the latter employee’s pay in order to come into compliance with the Equal Pay Act?**

No. The Equal Pay Act specifically prohibits reducing an employee’s pay to resolve a pay disparity.

**Q: Can an employer be found to have violated the Equal Pay Act if the employer did not intend to discriminate against a member of a protected class?**

Yes. In order to establish liability under the Equal Pay Act, an employee does not need to establish that an employer intended to discriminate against a member of a protected class.

**Q: If an employee makes a claim under the Equal Pay Act, to whom are his wages compared?**

An employee's wages are compared to those of employees performing substantially similar work in any of an employer's operations or facilities.

**Q: When someone makes a claim under the Equal Pay Act, can her wages be compared to the wages of other employees located outside the State of New Jersey?**

Yes. Subsection (t) states that "[c]omparisons of wage rates shall be based on wage rates in all of an employer's operations or facilities." So an employee is not precluded from filing a claim under the Equal Pay Act even if all of her comparators are located outside the State of New Jersey. However, as discussed below, an employer may defend differences in compensation for employees in different geographic locations by showing that those differences are based on differences in cost-of-living or in relevant labor markets in those areas and are not the result of discrimination.

**Q: How does the Equal Pay Act differ from the federal Equal Pay Act?**

New Jersey's Equal Pay Act is broader than the federal Equal Pay Act in two fundamental respects. First, New Jersey's Equal Pay Act covers members of all of the protected classes listed in the section entitled "Overview of the Law" above, whereas the federal Equal Pay Act covers only gender-based pay disparities. Second, the federal Equal Pay Act requires equal pay for only *equal work*, whereas New Jersey's Equal Pay Act requires equal pay for *substantially similar work*.

**D. Permissible Variations in Pay**

**Q: Are there exceptions to the general rule that prohibits an employer from paying an employee who is a member of a protected class less for substantially similar work than an employee who is not a member of that protected class?**

Yes. Even if two employees perform substantially similar work, an employer may pay them different rates of compensation if the employer can demonstrate:

1. That the pay differential is made *pursuant to a seniority system or a merit system*; or
2. That all five of the following are true:
  - a. "That the [pay] 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;
  - b. 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;
  - c. That each of the factors is applied reasonably;
  - d. That one or more of the factors account for the entire wage differential; and
  - e. 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."

**Q: Who bears the burden of proving that a pay differential for substantially similar work is nonetheless permissible under the Equal Pay Act as outlined above?**

The employer.

**Q: What is a system?**

A “system” is a plan, policy, or practice that is predetermined or predefined by the employer. A system is used by managers and others to make compensation decisions. A system is uniformly applied to employees in good faith without regard to membership in a protected class. Ad hoc determinations by an employer regarding what each individual employee is “worth” to the company do not constitute a “system.”

**Q: What is a seniority system?**

A seniority system is a system that recognizes and compensates employees based on length of service with the employer.

**Q: What is a merit system?**

A merit system is a system that provides for variations in pay based upon employee performance as measured through legitimate, job-related criteria.

**Q: What is a legitimate, bona fide factor other than the characteristics of members of the protected class?**

A legitimate, bona fide factor other than the characteristics of members of the protected class could be any genuine justification for a pay differential, including (but not limited to) training, education, experience, or the quantity or quality of production.

**Q: If an employer establishes that the difference in compensation is based on one or more legitimate, bona fide factors other than the characteristics of members of the protected class, can the employer still be liable?**

Yes. Even when an employer demonstrates that a pay disparity is based on a legitimate, bona fide factor other than a protected characteristic, the employer must still meet the other four requirements under subsection (t). Specifically, the employer must demonstrate that the factor or factors are not based on, and do not perpetuate, a differential in compensation based on membership in a protected class; that each of the factors is applied reasonably; “that one or more of the factors account for the entire wage differential”; *and* that “the factors are job-related with respect to the position in question and based on a legitimate business necessity.”

**Q: What is a factor that is not based on, and does not perpetuate, a differential in compensation based on membership in a protected class?**

A factor that is not based on, and does not perpetuate, a differential in compensation based on membership in a protected class is one that has not historically been associated with wage gaps for members of LAD-protected classes—for example, sales numbers. However, if a factor that was previously used to justify pay disparities did not explicitly refer to a protected characteristic but was used as a pretext for or had the effect of discriminating on the basis of that characteristic, that factor could not be used to justify pay disparities under the Equal Pay Act.

**Q: Can an employer rely on salary history in determining compensation, or would salary history be a factor that is based on or perpetuates a differential in compensation based on membership in a protected class?**

The answer will depend on the specific factual circumstances. However, reliance on salary history may perpetuate a differential in compensation based on membership in a protected class where there is a preexisting wage gap for members of that protected class.

**Q: When is a factor job-related with respect to the position and based on a legitimate business necessity?**

A factor is job related with respect to the position in question and based on a legitimate business necessity when it has both a direct relationship to the position and a direct relationship to the employer's legitimate business interests. A legitimate business interest can include financial considerations. However, a factor is not "based on a legitimate business necessity" when "it is demonstrated that there are alternative business practices that would serve the same business purpose without producing the wage differential." N.J.S.A. § 10:5-12(t).

**Q: Can geographic differences ever be a legitimate bona fide factor justifying a difference in compensation?**

Yes. Any such claim would be evaluated on a case-by-case basis and the employer is responsible for establishing any asserted affirmative defense. For example, a national employer could argue that its computer programmers in one city are paid more than its computer programmers in another location because of the higher cost-of-living in the former or because of the higher demand for computer programmers in the former market. It would then have to demonstrate that cost-of-living and/or demand are not based on, and do not perpetuate, a differential in compensation based on sex or any other protected characteristic; that both factors were applied reasonably and together accounted for the entire wage differential; and that both were job-related and based on a legitimate business necessity.

**Q: Who bears the burden of proving that there are alternative business practices that would serve the same business purpose without producing the wage differential?**

The employee.

**E. Prohibitions on Retaliation**

**Q: May an employer retaliate against an employee for disclosing or requesting compensation information?**

No. The Equal Pay Act specifically prohibits any employer from retaliating against any employee for requesting from, discussing, or disclosing to any employee, lawyer, or government agency, information about job title, occupational category, and compensation of any other employee or former employee, as well as the gender, race, ethnicity, national origin, or military status of those other employees. It is also unlawful for an employer to require an employee or prospective employee to agree not to discuss compensation as a condition of employment.

**Q: Does the Equal Pay Act extend protections for those seeking to vindicate their rights under the LAD more generally?**

Yes. Prior to the Equal Pay Act, Section 10:5-12(d) of the LAD prohibited any person from retaliating against a person who “opposed any practices or acts forbidden under” the LAD or who, among other things, “filed a complaint, testified or assisted in any proceeding” under the LAD. The Equal Pay Act broadens that protection by further prohibiting retaliation against anyone who seeks “legal advice regarding rights” under the LAD, “share[s] relevant information with legal counsel,” or “shares information with a governmental entity.” That applies to all rights under the LAD, not simply claims for equal pay.

**Q: May employers require employees to waive protections under the LAD or to consent to a shorter statute of limitations?**

No. The Equal Pay Act amends the LAD to make clear that “[i]t 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 LAD.

**F. Liability and Enforcement**

**Q: How is the Equal Pay Act enforced?**

An employee who believes his/her rights under Equal Pay Act have been violated may either: (1) file a lawsuit in court; or (2) file a complaint with DCR by visiting [www.NJCivilRights.gov](http://www.NJCivilRights.gov) or by calling (973) 648-2700.

**Q: When does a violation of the Equal Pay Act occur?**

The Equal Pay Act is violated each time disparate wages (or other compensation) are paid. In other words, if an employee who is a member of a protected class is paid less for substantially similar work than an employee who is not a member of that protected class, and the employer cannot justify the disparity as explained above, then each paycheck is a separate violation of the Equal Pay Act.

**Q: When must a claim under Equal Pay Act be brought?**

A complaint filed with DCR will be considered timely if it is filed within 180 days of the most recent discriminatory paycheck, compensation, or other benefit. Lawsuits alleging violations of the Equal Pay Act must be filed in court within two years of the most recent discriminatory paycheck, compensation, or other benefit.

**Q: Are employees required to make or submit a complaint to their employer before filing in court or with DCR?**

No. Employees are not required to make or submit complaints to their employer before filing in court or with DCR.

## **G. Damages and Remedies**

### **Q: What kind of damages and remedies may an employee recover if the Equal Pay Act was violated?**

Under the LAD, an employee who establishes a violation of the Equal Pay Act can receive some or all of the following remedies:

1. An order requiring the employer to cease and desist from the unlawful employment practice;
2. Lost wages and benefits;
3. Hiring, reinstatement, or promotion as appropriate, with back pay and interest;
4. Emotional distress damages;
5. Reasonable attorneys' fees if the complainant was represented by counsel;
6. Out-of-pocket expenses associated with pursuing the complaint; and
7. Punitive damages (in cases filed in Superior Court only).

DCR may also order attorneys' fees and affirmative relief (e.g., training, policy changes and monitoring) and may impose statutory penalties that the respondent must pay to the New Jersey Department of Treasury:

1. Up to \$10,000 for the first violation in a five-year period
2. Up to \$25,000 for the second violation in a five-year period
3. Up to \$50,000 for the third violation (and any additional violations) in a seven-year period.

In addition to these existing remedies under the LAD, the Equal Pay Act amends the LAD to provide treble damages (three times any monetary damages) for violations of the prohibition on unequal pay for substantially similar work found in 10:5-12(t) and for violations of the anti-retaliation prohibitions found in 10:5-12(r). If a jury finds a violation of subsection (t) or subsection (r), the judge *must* award treble damages to the plaintiff. If the Director of DCR determines an employer violated subsection (t) or subsection (r), the Director *may* award treble damages but is not required to do so.

## **H. Proactive Steps to Address Equal Pay**

### **Q: What happens if an employer undertakes a proactive review of its compensation practices and takes steps to rectify any pay disparities?**

DCR encourages employers to take proactive steps to address pay disparities among their employees and to ensure they are in compliance with the Equal Pay Act. In proceedings before DCR, if an employer has proactively conducted a self-evaluation of its pay practices and then made adjustments in compensation based on that self-evaluation, those adjustments will not be treated as an admission of liability.

## **I. Reporting Requirements**

### **Q: What are the new reporting requirements in the Equal Pay Act?**

Under the Equal Pay Act, any employer entering into a contract with the State of New Jersey or an instrumentality of the State for “qualifying services” or “public works” must provide to the Department of Labor and Workforce Development wage and demographic data for all employees who are employed in connection with the contract (for public works) and for all employees (for qualifying services). This requirement does not apply to employers who are contracting with local governments (for example, municipalities and counties). The report must contain the gender, race, ethnicity, job category, compensation, and number of hours worked by each employee.

### **Who enforces the new reporting requirements in Equal Pay Act?**

These reporting requirements are enforced by the Commissioner of the Department of Labor and Workforce Development. Instructions for complying with those reporting requirements can be found at: [https://nj.gov/labor/forms\\_pdfs/equalpayact/MW-564%20\(3-19\)%20Instructions.pdf](https://nj.gov/labor/forms_pdfs/equalpayact/MW-564%20(3-19)%20Instructions.pdf). In addition, the Department has codified rules to enforce those requirements. *See* N.J.A.C. 12:10.

## **J. More Information**

### **Q: Where can I find out more?**

The full text of Equal Pay Act is available on DCR’s website at: <https://www.nj.gov/oag/dcr/downloads/Equal-Pay-Act.pdf>.

A one-page fact sheet that explains the Equal Pay Act in understandable language is on DCR’s website in English at [https://www.nj.gov/oag/dcr/downloads/fact\\_EqualPay.pdf](https://www.nj.gov/oag/dcr/downloads/fact_EqualPay.pdf) and in Spanish at [https://www.nj.gov/oag/dcr/downloads/fact\\_EqualPay\\_ESP.pdf](https://www.nj.gov/oag/dcr/downloads/fact_EqualPay_ESP.pdf).



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