

September 24, 2012

ASSEMBLY BILL No. 2650
(First Reprint)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 2650 (First Reprint) with my recommendations for reconsideration.

For decades, New Jersey has led the Nation's fight against unlawful discrimination in its many forms, and defined our country's path towards inclusion and progress for all. Our leadership has produced a workforce proudly reflective of our State's rich cultural, ethnic, and gender diversity. While we celebrate the accomplishments that have enriched our communities, strengthened our families, and broadened our businesses, we must remain vigilant against efforts to derail our combined progress.

This bill is part of a patchwork of proposals that were passed together ostensibly to address gaps in gender pay through increased reporting and notice requirements for employers, and through modifications to the many State laws that currently exist to combat discrimination in the workplace. I wholly support the efforts of the Legislature to remind all those who work in our State of the need to root out discrimination, and to vigorously enforce our strong commitments to equality. Too often in our past, women have seen their incalculable contributions to the workplace insufficiently compensated. We cannot allow that progress to succumb to ignorance. That is why I am signing Assembly Bill No. 2647, creating a sensible Statewide notice requirement, into law today. This new notice provision, which requires employers to prominently advise all employees of the right to be free from pay discrimination, will

serve to educate our workforce by providing a clear and daily reminder of the protections set forth in our law.

I am also pleased to offer modest recommendations for improving two other bills pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution that will avoid problematic, unintended consequences in this important area of the law. These bills, as currently drafted, will serve to obfuscate current remedies and impose new and costly burdens upon the State's employers without genuinely enhancing the protections already provided to workers. Rather than creating uncertainty regarding the rights and obligations of employers and employees, the more thoughtful and constructive approach is to carefully revise State law where gaps exist. With these principles in mind, I am taking the following action:

First, Assembly Bill No. 2650 provides that a discriminatory compensation decision or other employment practice related to wages that is unlawful under the Law Against Discrimination ("LAD") occurs each occasion that compensation is paid, thus "restarting" the applicable statute of limitations, and effectively making each paycheck another instance of the discrimination. In this manner, the bill sensibly conforms to the present protections of federal law provided under the Lilly Ledbetter Fair Pay Act of 2009. Significantly, New Jersey law already matches the protections contained in the Ledbetter Act pursuant to a well-settled decision by the New Jersey Supreme Court. However, this bill departs from the Ledbetter Act and the guidance of the Supreme Court by omitting an explicit limitation on the amount of back pay an employee can recover. Therefore, I recommend that Assembly Bill No. 2650 be aligned to mirror the provisions of the Ledbetter Act, and the holding of

the New Jersey Supreme Court, thus advancing my Administration's efforts to provide consistency with federal standards as outlined in my Executive Order No. 2 of 2010.

Second, Assembly Bill No. 2648 purports to stretch the terms of the existing Conscientious Employee Protection Act ("CEPA"), also known as the "whistleblower" law, to prohibit employer retaliation against any employee who discloses to, or requests of, any other employee or former employee, information regarding job title, occupational category, compensation, or other demographic information, based on a reasonable belief that there is a discriminatory pay practice occurring in the workplace. Because workplace discrimination claims in New Jersey are brought under LAD, this amendment of CEPA is inconsistent with the original intent of that law, and is more consistent with the underlying goals of LAD. Therefore, to avoid altering the well-settled parameters of these critically important protections, I return Assembly Bill No. 2648 with my recommendations to remove the proposed language from CEPA and instead incorporate it into LAD so as to protect an individual who is being discriminated against through unlawful retaliation for discussing certain matters with her or his colleagues.

Finally, Assembly Bill No. 2649 requires any employer that contracts with the State to continually report to the Department of Labor and Workforce Development information regarding the gender, race, job title, occupational category, and total compensation of every employee in connection with the contract. While the Prevailing Wage Act already requires information regarding an employee's job title and rate of compensation to be submitted to the State, this bill would expand those requirements to include gender and race information, and would

also require such reporting by contractors who are not subject to the Prevailing Wage Act.

While the purported goal of Assembly Bill No. 2649 is to increase the transparency of certain businesses that are receiving State funds and to require disclosure by companies that are working in the public arena to ensure that they are complying with the State's workplace gender parity laws, this bill will unfortunately do nothing to tangibly improve pay disparity. Instead, the bill will burden countless employers with onerous reporting requirements, thereby driving up the cost of public contracts, which are ultimately shouldered by the taxpayer. Government transparency has been a priority of this Administration, and I have set forth numerous proposals over the last two years to increase government transparency. Regrettably, many of these proposals remain stalled in the Legislature. However, as these new reporting requirements fail to advance sound policy over senseless bureaucracy, I must return Assembly Bill No. 2649 without my approval.

Our State, like our Nation, is, and must remain, a home of equal rights and equal opportunity. I am pleased to honor that promise by enacting Assembly Bill No. 2647 into law, and anticipate the Legislature's swift concurrence with my improvements to Assembly Bill Nos. 2648 and 2650 so that they may become the law of our State as well.

Therefore, I herewith return Assembly Bill No. 2650 (First Reprint) and recommend that it be amended as follows:

<u>Page 3, Section 1, Line 22:</u>	After "or" insert "financial"
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<u>Page 3, Section 1, Line 27:</u>	After "or" other <u>practice."</u> insert "With respect to discrimination in compensation or in the financial terms or
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financial conditions of employment, in addition to any relief authorized by the laws of this State, an aggrieved person may obtain recovery of back pay for up to two years preceding the filing of the complaint."

Respectfully,

/s/ Chris Christie

Governor

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Attest:

/s/ Charles B. McKenna

Chief Counsel to the Governor