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EMPLOYER ALERT: New Jersey Legislature Imposes A New Annual Employee Notice Requirement Under CEPA

Governor James McGreevey recently signed into law an amendment to the New Jersey Conscientious Employee Protection Act ("CEPA") which introduced, effective immediately, a new notice requirement applicable to all New Jersey employers with ten or more employees. CEPA is one of the broadest employee whistleblower protection statutes in the country and decisions of the New Jersey courts have been liberally construing the law and expanding its coverage. CEPA prohibits employers from taking retaliatory actions against an employee who discloses or threatens to disclose, objects to, or refuses to participate in, any activity, policy or practice that the employee reasonably believes is illegal, criminal, or incompatible with a clear mandate of public policy concerning public health, safety or welfare. Employee CEPA claims have been skyrocketing in recent years and such claims are now a staple of employee wrongful termination complaints.

Prior to the recent amendment, CEPA required all employers to display a poster informing employees of the protections and obligations under CEPA. Now, employers with at least ten employees must take the additional step of distributing, on an annual basis, a written notice of employees' protections, obligations, rights and procedures under the law. The notice may be distributed either on paper or in electronic form. Both the traditional posting and the new annual notice must be in at least English and Spanish, and, at the employer's discretion, may be in any other language spoken by a majority of the employer's employees.

The statute requires the New Jersey Commissioner of Labor and Workforce Development to issue both an English and Spanish version of the annual notice for use by employers. The Commissioner has indicated that he will do so within a few weeks, although it is not certain when exactly this will occur. We will issue a follow up alert when the Commissioner does issue the new notices.

Our recommendation for employers with ten or more employees is that they distribute the required notice as soon as it is issued by the New Jersey Department of Labor and Workforce Development and then again at the beginning of each fiscal year. There are a variety of appropriate methods for distributing such notices, such as through envelope stuffers in employee paychecks, memos to employees, or electronic distribution by e-mail or company Intranet. However, given the various other notice and training requirements that employers must fulfill, especially in the area of employee harassment, it may be a good idea to schedule an annual meeting with all employees to distribute this CEPA notice at the same time as you distribute and explain your company's anti-harassment policy. Face-to-face distribution provides the added benefit of allowing you to obtain a signed receipt from each employee, which could be a critical factor if your company is ever subject to an employee lawsuit.

It is important to note that employers may also be required to amend their CEPA postings to include information about employees' rights and procedures under

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the Act. This posting requirement covers all employers, regardless of size. Although the new annual notice provision only covers employers with at least ten employees, it appears that this includes an employer's total workforce and not only employees working in New Jersey.

Although the notice provision is effective immediately, as set out above, employers may wish to wait until the Commissioner issues the notices in order to make a distribution. Employers seeking to ensure immediate compliance should contact David Rapuano or any member of Archer & Greiner's Labor and Employment Department at (856) 795-2121 or visit our website at www.archerlaw.com for assistance in drafting the new notices.