



New Jersey Diane B. Allen Equal Pay Act Only Applies to Conduct Occurring on or after July 1, 2018

Client Advisories

01.25.2019

On January 15, 2019, the United States District Court for the District of New Jersey held that the New Jersey Diane B. Allen Equal Pay Act ("NJEPA") only applies prospectively to conduct that is alleged to have occurred on or after its effective date - July 1, 2018. The State's Legislature passed the NJEPA last spring, and Governor Murphy signed the legislation into law on April 24, 2018. The NJEPA amended the New Jersey Law Against Discrimination ("NJLAD") to prohibit unequal pay for "substantially similar" work.

In *Perrotto v. Morgan Advanced Materials*, Defendant Morgan Advanced Materials terminated Plaintiff Perrotto on April 5, 2018. Perrotto alleged that this termination was retaliation for her complaints, as a Controller/Human Resources, that male employees were paid more than female employees for substantially similar work. These complaints and her termination all occurred before the NJEPA was signed into law and before the NJEPA's effective date - July 1, 2018. The District Court, faced with a motion to dismiss the counts under the NJEPA for this exact reason, ultimately dismissed the NJEPA claims with prejudice, holding that the NJEPA did not apply retroactively to conduct occurring before its effective date.

The Court reasoned that there are three circumstances that would permit retroactive application of legislation: (1) clear legislative intent to have retroactive application, (2) the amendment is curative of pre-existing law, and (3) the parties' expectations warrant such application. Here, the Court found that the Legislature did not intend for retroactive application as evidenced by its clear, plain language setting an effective date months after the date upon which the Legislature passed the law itself. Further, while the NJEPA amends the NJLAD, it was not a curative amendment in that the amendment was not to remedy a perceived imperfection or misapplication of the NJLAD. The protections in the NJEPA are an expansion of those in the NJLAD - not a correction of them. Finally, the Court determined that the parties did not have any expectations that would warrant retroactive application.

If you have questions about whether your compensation practices or policies are compliant with the New Jersey Diane B. Allen Equal Pay Act or whether any of your employment practices or policies are compliant with the New Jersey Law Against Discrimination, please contact any member of Archer & Greiner's **Labor and Employment Group** in Haddonfield, N.J., at (856) 795-2121, in Princeton, N.J., at (609) 580-3700, in Hackensack, N.J., at (201) 342-6000, in Philadelphia, Pa., at (215) 963-3300, or in Wilmington, Del., at (302) 777-4350.

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Attachments

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