



Mandatory Anti-Harassment Training and Other New Amendments to the NJ Law Against Discrimination May Be Coming Soon

Client Advisories

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New Jersey Governor Phil Murphy has issued “Proposals to Strengthen New Jersey’s Anti-Harassment Laws,” that if enacted into law, will significantly expand the New Jersey Law Against Discrimination (“NJLAD”). The proposed legislation is consistent with what is quickly becoming a countrywide push to expand laws aimed at preventing sexual and other forms of harassment in the workplace. Some of the proposals, which would amend the NJLAD, are described below:

Mandatory Anti-Harassment and Non-Discrimination Training

The proposed amendments would mandate that all employers in New Jersey train their employees regarding the avoidance of harassment and discrimination in the workplace. For employers with less than 50 employees, they can choose to utilize a module that the New Jersey Division on Civil Rights will apparently prepare. Employers with 50 or more employees would have to provide live, in-person training that must be interactive so employees can pose questions. For non-supervisory employees, employers must provide the training within 90 days of hire and at least once every two years. For supervisory employees, employers must provide the training within 90 days of hire or promotion, and at least once every two years. Employers must maintain records of an employee’s completion of the trainings for at least 3 years under the proposed amendments.

Mandatory Anti-Harassment and Non-Discrimination Policy

The proposed amendments would also require employers to adopt a written policy addressing illegal harassment and discrimination based on all of the protected categories under the NJLAD. This policy must also extend to an employee’s interactions with vendors, suppliers, customers, and patrons of the business. The policy must further contain numerous specific provisions. For example, it must note that unlawful harassment or discrimination constitutes “employee misconduct”; provide examples of such unlawful conduct; describe the

process for filing both an internal complaint, as well as a complaint with the Division on Civil Rights; notify employees of the statute of limitations; prohibit retaliation; describe the consequences for violating the policy; and include a statement that the employer is committed to conducting prompt, thorough, and impartial investigations of complaints.

Employers would be required to provide a copy of the policy to employees not just at the commencement of employment, but also every year thereafter. They must also provide a copy of the policy when an employee complains about a violation or is interviewed in connection with a complaint, and whenever the employer revises the policy. Employers with 50 or more employees must also provide the policy to employees upon promotion. Such larger employers would also be required to post the policy in a prominent location on the employer's website.

Mandatory Reporting of Harassment, Discrimination, and Retaliation Complaints

The proposed amendments would additionally require employers with 50 or more employees to track and provide data to the Division on Civil Rights annually regarding any employee complaints of harassment, discrimination or retaliation. Specifically, employers would need to track the number of complaints filed, the number found substantiated versus unsubstantiated, and the number pending resolution. The employer would also have to identify the employee's protected category as part of its reporting to the Division on Civil Rights.

Definition of "Hostile Work Environment"

The proposed legislation also codifies the definition of "hostile work environment," which is defined as conduct occurring "because of sex or any other characteristic protected under [the NJLAD]." The definition also notes that the conduct must be that "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." The proposed amendments, however, also establish that a complainant's "subjective responses" to the conduct are also relevant to the analysis. They also set forth additional factors to consider when deciding whether an unlawful hostile work environment exists, such as:

- The totality of the circumstances considering their "cumulative effect" as opposed to "individual incidents in isolation," although a "single incident of harassing conduct may be sufficiently severe to create a triable issue of fact," meaning that a jury gets to decide.
- The employee's knowledge of harassment directed to others, regardless of whether or not the employee actually witnessed the harassing conduct.
- Harassing conduct need not be physical in nature.
- A complaining employee need not show a loss of any tangible job benefits or that the employee's productivity declined in order to establish a hostile work environment.

Protections for Interns and Domestic Employees



The proposed amendments further expand who is a covered employee under the NJLAD by including individuals “without regard to whether any such individual, including an intern, performs such services in exchange for a salary or wage.” The proposed amendments would also include as covered employers any persons who employ domestic workers, such as those employed in a private residence as a nanny, au pair, caretaker, babysitter, housekeeper, maid, cook, or gardener.

Expanded Statute of Limitations

The proposed amendments would also extend the current statute of limitations for filing claims under the NJLAD in court, from 2 years to 3 years. They would also extend the time for filing an administrative complaint with the Division on Civil Rights, from 180 days to 1 year.

Takeaway

While all of the above constitute proposed amendments only, given the continuing strength of the #MeToo movement and New Jersey’s recent tendency to quickly pass new labor and employment laws notwithstanding their practical impact on employers, we anticipate that New Jersey will pass these amendments in some substantially similar form. This will almost certainly include the new mandatory anti-harassment training and policy requirements, which employers should be currently doing anyway because they help provide a defense to harassment claims.

We will continue to monitor the proposed legislation and report on further developments as they arise.

For more information, or if you have any questions regarding this alert, you may contact Archer attorney **Douglas Diaz, Esquire** at ddiaz@archerlaw.com or **David Rapuano, Esquire** at drapuano@archerlaw.com, or one of Archer’s other experienced **labor and employment law** attorneys at (856) 795-2121.

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