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New Jersey Expands Law Against Discrimination with Additional Age Discrimination Protections

Client Advisories

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On Tuesday, October 5th, New Jersey Governor Murphy signed into law, Assembly Bill, A681, imposing additional age discrimination protections, which expands the current prohibition of discrimination and harassment based on age under the New Jersey Law Against Discrimination ("NJLAD"). The NJLAD prohibits discrimination and harassment based on many protected traits beyond age, such as race, gender, disability, and religion. The NJLAD expands these protections against age discrimination in four ways.

First, under the previous version of the NJLAD, government employers could implement a mandatory retirement age if they could show a relationship between the age and employment position at issue. Now, under the expanded provisions, government employers cannot mandate retirement as long as the employee can adequately perform their job later in age. Further, when reviewing employees' performances, State employers are not permitted to factor age in their evaluation.

Second, previously under Section 11, the NJLAD disclaimed that "nothing herein contained shall be construed to bar an employer from refusing to accept for employment or to promote any person over 70 years." Now, under the expanded protections, this Section is removed, meaning that employers are now prohibited from denying employment or promotion to any employee because they are over 70 years of age.

Third, previously under Section 4, the NJLAD permitted higher education institutions to require retirement of tenured employees over the age of 70. This Section has also been repealed under the expanded protections.

Lastly, the NJLAD previously limited the remedies available to employees, who were forced to retire due to age, to reinstatement and backpay. Now, Section 5 of the NJLAD expands the remedies available such employees to include all of the remedies typically available for discrimination under the NJLAD.

Given these additional protections for employees on the basis of age, it is essential that employers, both public and private, review their employment policies and practices to ensure compliance. If you have questions about

whether your policies and practices comply with the expanded protections for employees on the basis of age, please contact Peter L. Frattarelli, Ashley M. LeBrun, or any member of Archer's Labor and Employment Group.

Attachments

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