SENATE, No. 104

STATE OF NEW JERSEY
218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:
Senator LORETTA WEINBERG
District 37 (Bergen)
Senator STEPHEN M. SWEENEY
District 3 (Cumberland, Gloucester and Salem)
Senator SANDRA B. CUNNINGHAM
District 31 (Hudson)

Co-Sponsored by:
Senators Cruz-Perez, Ruiz, Gill, Greenstein, Pou, Gordon, Turner, Beach, Brown and Madden

SYNOPSIS
Concerns equal pay for women and employment discrimination.

CURRENT VERSION OF TEXT
Introduced Pending Technical Review by Legislative Counsel.

(Sponsorship Updated As Of: 3/6/2018)
AN ACT concerning equal pay for women and employment
discrimination, requiring public contractors to report certain
employment information, amending P.L.1945, c.169, and
supplementing P.L.1952, c.9 (C.34:11-56.1 et seq.).

BE IT ENACTED by the Senate and General Assembly of the State
of New Jersey:

1. Section 11 of P.L.1945, c.169 (C.10:5-12) is amended to
read as follows:

II. It shall be an unlawful employment practice, or, as the case
may be, an unlawful discrimination:

a. For an employer, because of the race, creed, color, national
origin, ancestry, age, marital status, civil union status, domestic
partnership status, affectional or sexual orientation, genetic
information, pregnancy, sex, gender identity or expression,
disability or atypical hereditary cellular or blood trait of any
individual, or because of the liability for service in the Armed
Forces of the United States or the nationality of any individual, or
because of the refusal to submit to a genetic test or make available
the results of a genetic test to an employer, to refuse to hire or
employ or to bar or to discharge or require to retire, unless justified
by lawful considerations other than age, from employment such
individual or to discriminate against such individual in
compensation or in terms, conditions or privileges of employment;
provided, however, it shall not be an unlawful employment practice
to refuse to accept for employment an applicant who has received a
notice of induction or orders to report for active duty in the armed
forces; provided further that nothing herein contained shall be
construed to bar an employer from refusing to accept for
employment any person on the basis of sex in those certain
circumstances where sex is a bona fide occupational qualification,
reasonably necessary to the normal operation of the particular
business or enterprise; provided further 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 of
age; provided further that it shall not be an unlawful employment
practice for a club exclusively social or fraternal to use club
membership as a uniform qualification for employment, or for a
religious association or organization to utilize religious affiliation
as a uniform qualification in the employment of clergy, religious
teachers or other employees engaged in the religious activities of
the association or organization, or in following the tenets of its
religion in establishing and utilizing criteria for employment of an
employee; provided further, that it shall not be an unlawful

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
employment practice to require the retirement of any employee
who, for the two-year period immediately before retirement, is
employed in a bona fide executive or a high policy-making position,
if that employee is entitled to an immediate non-forfeitable annual
retirement benefit from a pension, profit sharing, savings or
deferred retirement plan, or any combination of those plans, of the
employer of that employee which equals in the aggregate at least
$27,000.00; and provided further that an employer may restrict
employment to citizens of the United States where such restriction
is required by federal law or is otherwise necessary to protect the
national interest.

The provisions of subsections a. and b. of section 57 of
P.L.2003, c.246 (C.34:11A-20), and the provisions of section 58 of
P.L.2003, c.246 (C.26:8A-11), shall not be deemed to be an
unlawful discrimination under P.L.1945, c.169 (C.10:5-1 et seq.).

For the purposes of this subsection, a "bona fide executive" is a
top level employee who exercises substantial executive authority
over a significant number of employees and a large volume of
business. A "high policy-making position" is a position in which a
person plays a significant role in developing policy and in
recommending the implementation thereof.

For the purposes of this subsection, an unlawful employment
practice occurs, with respect to discrimination in compensation or
in the financial terms or conditions of employment, each occasion
that an individual is affected by application of a discriminatory
compensation decision or other practice, including, but not limited
to, each occasion that wages, benefits, or other compensation are
paid, resulting in whole or in part from the decision or other
practice.

In addition to any other relief authorized by the "Law Against
Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) for
discrimination in compensation or in the financial terms or
conditions of employment, liability shall accrue and an aggrieved
person may obtain relief for back pay for the entire period of time
in which the violation with regard to discrimination in
compensation or in the financial terms or conditions of employment
has been continuous, if the violation continues to occur within the
statute of limitations.

Nothing in this subsection shall prohibit the application of the
doctrine of "continuing violation" or the "discovery rule" to any
appropriate claim as those doctrines currently exist in New Jersey
common law. It shall be an unlawful employment practice to
require employees or prospective employees to consent to a
shortened statute of limitations or to waive any of the protections
provided by this act.

b. For a labor organization, because of the race, creed, color,
national origin, ancestry, age, marital status, civil union status,
domestic partnership status, affectional or sexual orientation,
gender identity or expression, disability, pregnancy, or sex of any
individual, or because of the liability for service in the Armed
Forces of the United States or nationality of any individual, to
exclude or to expel from its membership such individual or to
discriminate in any way against any of its members, against any
applicant for, or individual included in, any apprentice or other
training program or against any employer or any individual
employed by an employer; provided, however, that nothing herein
contained shall be construed to bar a labor organization from
excluding from its apprentice or other training programs any person
on the basis of sex in those certain circumstances where sex is a
bona fide occupational qualification reasonably necessary to the
normal operation of the particular apprentice or other training
program.

c. For any employer or employment agency to print or circulate
or cause to be printed or circulated any statement, advertisement or
publication, or to use any form of application for employment, or to
make an inquiry in connection with prospective employment, which
expresses, directly or indirectly, any limitation, specification or
discrimination as to race, creed, color, national origin, ancestry,
age, marital status, civil union status, domestic partnership status,
affectional or sexual orientation, gender identity or expression,
disability, nationality, pregnancy, or sex or liability of any applicant
for employment for service in the Armed Forces of the United
States, or any intent to make any such limitation, specification or
discrimination, unless based upon a bona fide occupational
qualification.

d. For any person to take reprisals against any person because
that person has opposed any practices or acts forbidden under this
act or because that person has sought legal advice regarding rights
under this act, shared relevant information with legal counsel,
shared information with a governmental entity, or filed a complaint,
testified or assisted in any proceeding under this act, or to coerce,
immate, threaten or interfere with any person in the exercise or
enjoyment of, or on account of that person having aided or
encouraged any other person in the exercise or enjoyment of, any
right granted or protected by this act.

e. For any person, whether an employer or an employee or not,
to aid, abet, incite, compel or coerce the doing of any of the acts
forbidden under this act, or to attempt to do so.

f. (1) For any owner, lessee, proprietor, manager,
superintendent, agent, or employee of any place of public
accommodation directly or indirectly to refuse, withhold from or
deny to any person any of the accommodations, advantages,
facilities or privileges thereof, or to discriminate against any person
in the furnishing thereof, or directly or indirectly to publish,
circulate, issue, display, post or mail any written or printed
communication, notice, or advertisement to the effect that any of
the accommodations, advantages, facilities, or privileges of any
such place will be refused, withheld from, or denied to any person
on account of the race, creed, color, national origin, ancestry,
marital status, civil union status, domestic partnership status,
pregnancy, sex, gender identity or expression, affectional or sexual
orientation, disability or nationality of such person, or that the
patronage or custom thereof of any person of any particular race,
creed, color, national origin, ancestry, marital status, civil union
status, domestic partnership status, pregnancy status, sex, gender
identity or expression, affectional or sexual orientation, disability or
nationality is unwelcome, objectionable or not acceptable, desired
or solicited, and the production of any such written or printed
communication, notice or advertisement, purporting to relate to any
such place and to be made by any owner, lessee, proprietor,
superintendent or manager thereof, shall be presumptive evidence in
any action that the same was authorized by such person; provided,
however, that nothing contained herein shall be construed to bar any
place of public accommodation which is in its nature reasonably
restricted exclusively to individuals of one sex, and which shall
include but not be limited to any summer camp, day camp, or resort
camp, bathhouse, dressing room, swimming pool, gymnasium,
comfort station, dispensary, clinic or hospital, or school or
educational institution which is restricted exclusively to individuals
of one sex, provided individuals shall be admitted based on their
gender identity or expression, from refusing, withholding from or
denying to any individual of the opposite sex any of the
accommodations, advantages, facilities or privileges thereof on the
basis of sex; provided further, that the foregoing limitation shall not
apply to any restaurant as defined in R.S.33:1-1 or place where
alcoholic beverages are served.

(2) Notwithstanding the definition of "a place of public
accommodation" as set forth in subsection 1. of section 5 of
P.L.1945, c.169 (C.10:5-5), for any owner, lessee, proprietor,
manager, superintendent, agent, or employee of any private club or
association to directly or indirectly refuse, withhold from or deny to
any individual who has been accepted as a club member and has
contracted for or is otherwise entitled to full club membership any
of the accommodations, advantages, facilities or privileges thereof,
or to discriminate against any member in the furnishing thereof on
account of the race, creed, color, national origin, ancestry, marital
status, civil union status, domestic partnership status, pregnancy,
sex, gender identity, or expression, affectional or sexual orientation,
disability or nationality of such person.

In addition to the penalties otherwise provided for a violation of
P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2)
of subsection f. of this section is the holder of an alcoholic beverage
license issued under the provisions of R.S.33:1-12 for that private
club or association, the matter shall be referred to the Director of
the Division of Alcoholic Beverage Control who shall impose an
appropriate penalty in accordance with the procedures set forth in

g. For any person, including but not limited to, any owner,
lessee, lessee, assignee or managing agent of, or other person
having the right of ownership or possession of or the right to sell,
rent, lease, assign, or sublease any real property or part or portion
thereof, or any agent or employee of any of these:

(1) To refuse to sell, rent, lease, assign, or sublease or otherwise
to deny to or withhold from any person or group of persons any real
property or part or portion thereof because of race, creed, color,
national origin, ancestry, marital status, civil union status, domestic
partnership status, pregnancy, sex, gender identity or expression,
affectual or sexual orientation, familial status, disability,
nationality, or source of lawful income used for rental or mortgage
payments;

(2) To discriminate against any person or group of persons
because of race, creed, color, national origin, ancestry, marital
status, civil union status, domestic partnership status, pregnancy,
sex, gender identity or expression, affectual or sexual orientation,
familial status, disability, nationality or source of lawful income
used for rental or mortgage payments in the terms, conditions or
privileges of the sale, rental or lease of any real property or part or
portion thereof or in the furnishing of facilities or services in
connection therewith;

(3) To print, publish, circulate, issue, display, post or mail, or
cause to be printed, published, circulated, issued, displayed, posted
or mailed any statement, advertisement, publication or sign, or to
use any form of application for the purchase, rental, lease,
assignment or sublease of any real property or part or portion
thereof, or to make any record or inquiry in connection with the
prospective purchase, rental, lease, assignment, or sublease of any
real property, or part or portion thereof which expresses, directly or
indirectly, any limitation, specification or discrimination as to race,
creed, color, national origin, ancestry, marital status, civil union
status, domestic partnership status, pregnancy, sex, gender identity,
or expression, affectual or sexual orientation, familial status,
disability, nationality, or source of lawful income used for rental or
mortgage payments, or any intent to make any such limitation,
specification or discrimination, and the production of any such
statement, advertisement, publicity, sign, form of application,
record, or inquiry purporting to be made by any such person shall
be presumptive evidence in any action that the same was authorized
by such person; provided, however, that nothing contained in this
subsection shall be construed to bar any person from refusing to
sell, rent, lease, assign or sublease or from advertising or recording
a qualification as to sex for any room, apartment, flat in a dwelling
or residential facility which is planned exclusively for and occupied
by individuals of one sex to any individual of the exclusively
opposite sex on the basis of sex provided individuals shall be
qualified based on their gender identity or expression;

(4) To refuse to sell, rent, lease, assign, or sublease or otherwise
to deny to or withhold from any person or group of persons any real
property or part or portion thereof because of the source of any
lawful income received by the person or the source of any lawful
rent payment to be paid for the real property; or

(5) To refuse to rent or lease any real property to another person
because that person's family includes children under 18 years of
age, or to make an agreement, rental or lease of any real property
which provides that the agreement, rental or lease shall be rendered
null and void upon the birth of a child. This paragraph shall not
apply to housing for older persons as defined in subsection mm. of
section 5 of P.L.1945, c.169 (C.10:5-5).

h. For any person, including but not limited to, any real estate
broker, real estate salesperson, or employee or agent thereof:

(1) To refuse to sell, rent, assign, lease or sublease, or offer for
sale, rental, lease, assignment, or sublease any real property or part
or portion thereof to any person or group of persons or to refuse to
negotiate for the sale, rental, lease, assignment, or sublease of any
real property or part or portion thereof to any person or group of
persons because of race, creed, color, national origin, ancestry,
marital status, civil union status, domestic partnership status,
familial status, pregnancy, sex, gender identity or expression,
affective or sexual orientation, disability, nationality, or source of
lawful income used for rental or mortgage payments, or to represent
that any real property or portion thereof is not available for
inspection, sale, rental, lease, assignment, or sublease when in fact
it is so available, or otherwise to deny or withhold any real property
or any part or portion of facilities thereof to or from any person or
group of persons because of race, creed, color, national origin,
ancestry, marital status, civil union status, domestic partnership
status, familial status, pregnancy, sex, gender identity or expression,
affective or sexual orientation, disability or nationality;

(2) To discriminate against any person because of race, creed,
color, national origin, ancestry, marital status, civil union status,
domestic partnership status, familial status, pregnancy, sex, gender
identity or expression, affective or sexual orientation, disability,
nationality, or source of lawful income used for rental or mortgage
payments in the terms, conditions or privileges of the sale, rental,
lease, assignment or sublease of any real property or part or portion
thereof or in the furnishing of facilities or services in connection
therewith;

(3) To print, publish, circulate, issue, display, post, or mail, or
cause to be printed, published, circulated, issued, displayed, posted
or mailed any statement, advertisement, publication or sign, or to
use any form of application for the purchase, rental, lease,
assignment, or sublease of any real property or part or portion thereof or to make any record or inquiry in connection with the prospective purchase, rental, lease, assignment, or sublease of any real property or part or portion thereof which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, familial status, pregnancy, sex, gender identity or expression, affectional or sexual orientation, disability, nationality, or source of lawful income used for rental or mortgage payments or any intent to make any such limitation, specification or discrimination, and the production of any such statement, advertisement, publicity, sign, form of application, record, or inquiry purporting to be made by any such person shall be presumptive evidence in any action that the same was authorized by such person; provided, however, that nothing contained in this subsection shall be construed to bar any person from refusing to sell, rent, lease, assign or sublease or from advertising or recording a qualification as to sex for any room, apartment, flat in a dwelling or residential facility which is planned exclusively for and occupied exclusively by individuals of one sex to any individual of the opposite sex on the basis of sex, provided individuals shall be qualified based on their gender identity or expression; 

(4) To refuse to sell, rent, lease, assign, or sublease or otherwise to deny to or withhold from any person or group of persons any real property or part or portion thereof because of the source of any lawful income received by the person or the source of any lawful rent payment to be paid for the real property; or

(5) To refuse to rent or lease any real property to another person because that person's family includes children under 18 years of age, or to make an agreement, rental or lease of any real property which provides that the agreement, rental or lease shall be rendered null and void upon the birth of a child. This paragraph shall not apply to housing for older persons as defined in subsection mm. of section 5 of P.L.1945, c.169 (C.10:5-5).

i. For any person, bank, banking organization, mortgage company, insurance company or other financial institution, lender or credit institution involved in the making or purchasing of any loan or extension of credit, for whatever purpose, whether secured by residential real estate or not, including but not limited to financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any real property or part or portion thereof or any agent or employee thereof;

(1) To discriminate against any person or group of persons because of race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, pregnancy, sex, gender identity or expression, affectional or sexual orientation, disability, familial status or nationality, in the granting, withholding, extending, modifying, renewing, or purchasing, or in
the fixing of the rates, terms, conditions or provisions of any such
loan, extension of credit or financial assistance or purchase thereof
or in the extension of services in connection therewith;
(2) To use any form of application for such loan, extension of
credit or financial assistance or to make record or inquiry in
connection with applications for any such loan, extension of credit
or financial assistance which expresses, directly or indirectly, any
limitation, specification or discrimination as to race, creed, color,
national origin, ancestry, marital status, civil union status, domestic
partnership status, pregnancy, sex, gender identity or expression,
affectual or sexual orientation, disability, familial status or
nationality or any intent to make any such limitation, specification
or discrimination; unless otherwise required by law or regulation to
retain or use such information;
(3) (Deleted by amendment, P.L.2003, c.180).
(4) To discriminate against any person or group of persons
because of the source of any lawful income received by the person
or the source of any lawful rent payment to be paid for the real
property; or
(5) To discriminate against any person or group of persons
because that person's family includes children under 18 years of
age, or to make an agreement or mortgage which provides that the
agreement or mortgage shall be rendered null and void upon the
birth of a child. This paragraph shall not apply to housing for older
persons as defined in subsection mm. of section 5 of P.L.1945,
c.169 (C.10:5-5).
j. For any person whose activities are included within the
scope of this act to refuse to post or display such notices concerning
the rights or responsibilities of persons affected by this act as the
Attorney General may by regulation require.
k. For any real estate broker, real estate salesperson or
employee or agent thereof or any other individual, corporation,
partnership, or organization, for the purpose of inducing a
transaction for the sale or rental of real property from which
transaction such person or any of its members may benefit
financially, to represent that a change has occurred or will or may
occur in the composition with respect to race, creed, color, national
origin, ancestry, marital status, civil union status, domestic
partnership status, familial status, pregnancy, sex, gender identity or
expression, affectual or sexual orientation, disability, nationality,
or source of lawful income used for rental or mortgage payments of
the owners or occupants in the block, neighborhood or area in
which the real property is located, and to represent, directly or
indirectly, that this change will or may result in undesirable
consequences in the block, neighborhood or area in which the real
property is located, including, but not limited to the lowering of
property values, an increase in criminal or anti-social behavior, or a
decline in the quality of schools or other facilities.
l. For any person to refuse to buy from, sell to, lease from or
to, license, contract with, or trade with, provide goods, services or
information to, or otherwise do business with any other person on
the basis of the race, creed, color, national origin, ancestry, age,
pregnancy, sex, gender identity or expression, affectional or sexual
orientation, marital status, civil union status, domestic partnership
status, liability for service in the Armed Forces of the United States,
disability, nationality, or source of lawful income used for rental or
mortgage payments of such other person or of such other person's
spouse, partners, members, stockholders, directors, officers,
managers, superintendents, agents, employees, business associates,
suppliers, or customers. This subsection shall not prohibit refusals
or other actions (1) pertaining to employee-employer collective
bargaining, labor disputes, or unfair labor practices, or (2) made or
taken in connection with a protest of unlawful discrimination or
unlawful employment practices.

m. For any person to:

(1) Grant or accept any letter of credit or other document which
evidences the transfer of funds or credit, or enter into any contract
for the exchange of goods or services, where the letter of credit,
contract, or other document contains any provisions requiring any
person to discriminate against or to certify that he, she or it has not
dealt with any other person on the basis of the race, creed, color,
national origin, ancestry, age, pregnancy, sex, gender identity or
expression, affectional or sexual orientation, marital status, civil
union status, domestic partnership status, disability, liability for
service in the Armed Forces of the United States, or nationality of
such other person or of such other person's spouse, partners,
managers, stockholders, directors, officers, managers,
superintendents, agents, employees, business associates, suppliers,
or customers.

(2) Refuse to grant or accept any letter of credit or other
document which evidences the transfer of funds or credit, or refuse
to enter into any contract for the exchange of goods or services, on
the ground that it does not contain such a discriminatory provision
or certification.

The provisions of this subsection shall not apply to any letter of
credit, contract, or other document which contains any provision
pertaining to employee-employer collective bargaining, a labor
dispute or an unfair labor practice, or made in connection with the
protest of unlawful discrimination or an unlawful employment
practice, if the other provisions of such letter of credit, contract, or
other document do not otherwise violate the provisions of this
subsection.

n. For any person to aid, abet, incite, compel, coerce, or induce
the doing of any act forbidden by subsections l. and m. of section
11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
do so. Such prohibited conduct shall include, but not be limited to:
(1) Buying from, selling to, leasing from or to, licensing, contracting with, trading with, providing goods, services, or information to, or otherwise doing business with any person because that person does, or agrees or attempts to do, any such act or any act prohibited by this subsection; or

(2) Boycotting, commercially blacklisting or refusing to buy from, sell to, lease from or to, license, contract with, provide goods, services or information to, or otherwise do business with any person because that person has not done or refuses to do any such act or any act prohibited by this subsection; provided that this subsection shall not prohibit refusals or other actions either pertaining to employee-employer collective bargaining, labor disputes, or unfair labor practices, or made or taken in connection with a protest of unlawful discrimination or unlawful employment practices.

c. For any multiple listing service, real estate brokers' organization or other service, organization or facility related to the business of selling or renting dwellings to deny any person access to or membership or participation in such organization, or to discriminate against such person in the terms or conditions of such access, membership, or participation, on account of race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, familial status, pregnancy, sex, gender identity or expression, affectional or sexual orientation, disability or nationality.

p. Nothing in the provisions of this section shall affect the ability of an employer to require employees to adhere to reasonable workplace appearance, grooming and dress standards not precluded by other provisions of State or federal law, except that an employer shall allow an employee to appear, groom and dress consistent with the employee's gender identity or expression.

q. (1) For any employer to impose upon a person as a condition of obtaining or retaining employment, including opportunities for promotion, advancement or transfers, any terms or conditions that would require a person to violate or forego a sincerely held religious practice or religious observance, including but not limited to the observance of any particular day or days or any portion thereof as a Sabbath or other holy day in accordance with the requirements of the religion or religious belief, unless, after engaging in a bona fide effort, the employer demonstrates that it is unable to reasonably accommodate the employee's religious observance or practice without undue hardship on the conduct of the employer's business. Notwithstanding any other provision of law to the contrary, an employee shall not be entitled to premium wages or premium benefits for work performed during hours to which those premium wages or premium benefits would ordinarily be applicable, if the employee is working during those hours only as an accommodation to his religious requirements. Nothing in this subsection q. shall be construed as reducing:
(a) The number of the hours worked by the employee which are
counted towards the accruing of seniority, pension or other benefits;
or
(b) Any premium wages or benefits provided to an employee
pursuant to a collective bargaining agreement.

(2) For an employer to refuse to permit an employee to utilize
leave, as provided for in this subsection q., which is solely used to
accommodate the employee's sincerely held religious observance or
practice. Except where it would cause an employer to incur an
undue hardship, no person shall be required to remain at his place
of employment during any day or days or portion thereof that, as a
requirement of his religion, he observes as his Sabbath or other holy
day, including a reasonable time prior and subsequent thereto for
travel between his place of employment and his home; provided that
any such absence from work shall, wherever practicable in the
reasonable judgment of the employer, be made up by an equivalent
amount of time and work at some other mutually convenient time,
or shall be charged against any leave with pay ordinarily granted,
other than sick leave, and any such absence not so made up or
charged, may be treated by the employer of that person as leave
taken without pay.

(3) (a) For purposes of this subsection q., "undue hardship"
means an accommodation requiring unreasonable expense or
difficulty, unreasonable interference with the safe or efficient
operation of the workplace or a violation of a bona fide seniority
system or a violation of any provision of a bona fide collective
bargaining agreement.

(b) In determining whether the accommodation constitutes an
undue hardship, the factors considered shall include:

(i) The identifiable cost of the accommodation, including the
costs of loss of productivity and of retaining or hiring employees or
transferring employees from one facility to another, in relation to
the size and operating cost of the employer.

(ii) The number of individuals who will need the particular
accommodation for a sincerely held religious observance or
practice.

(iii) For an employer with multiple facilities, the degree to which
the geographic separateness or administrative or fiscal relationship
of the facilities will make the accommodation more difficult or
expensive.

(c) An accommodation shall be considered to constitute an
undue hardship if it will result in the inability of an employee to
perform the essential functions of the position in which he or she is
employed.

(d) (i) The provisions of this subsection q. shall be applicable
only to reasonable accommodations of religious observances and
shall not supersede any definition of undue hardship or standards
for reasonable accommodation of the disabilities of employees.
(ii) This subsection shall not apply where the uniform application of terms and conditions of attendance to employees is essential to prevent undue hardship to the employer. The burden of proof regarding the applicability of this subparagraph (d) shall be upon the employer.

r. For any employer to take reprisals against any employee for requesting from, or disclosing to, any other employee or former employee of the employer, a lawyer from whom the employee seeks legal advice, or any government agency information regarding the job title, occupational category, and rate of compensation, including benefits, of the employee or any other employee or former employee of the employer, or the gender, race, ethnicity, military status, or national origin of the employee or any other employee or former employee of the employer, regardless of whether the request was responded to, if the purpose of the request for the information was to assist in investigating the possibility of the occurrence of, or in taking of legal action regarding, potential discriminatory treatment concerning pay, compensation, bonuses, other compensation, or benefits, or to require, as a condition of employment, any employee or prospective employee to sign a waiver, or to otherwise require an employee or prospective employee to agree, not to make those requests or disclosures.

Nothing in this subsection shall be construed to require an employee to disclose such information about the employee herself to any other employee or former employee of the employer or to any authorized representative of the other employee or former employee.

s. For an employer to treat, for employment-related purposes, a woman employee that the employer knows, or should know, is affected by pregnancy in a manner less favorable than the treatment of other persons not affected by pregnancy but similar in their ability or inability to work. In addition, an employer of an employee who is a woman affected by pregnancy shall make available to the employee reasonable accommodation in the workplace, such as bathroom breaks, breaks for increased water intake, periodic rest, assistance with manual labor, job restructuring or modified work schedules, and temporary transfers to less strenuous or hazardous work, for needs related to the pregnancy when the employee, based on the advice of her physician, requests the accommodation, unless the employer can demonstrate that providing the accommodation would be an undue hardship on the business operations of the employer. The employer shall not in any way penalize the employee in terms, conditions or privileges of employment for requesting or using the accommodation. Workplace accommodation provided pursuant to this subsection and paid or unpaid leave provided to an employee affected by pregnancy shall not be provided in a manner less favorable than accommodations or leave provided to other employees not affected by pregnancy but
similar in their ability or inability to work. This subsection shall
not be construed as otherwise increasing or decreasing any
employee's rights under law to paid or unpaid leave in connection
with pregnancy.

For the purposes of this section "pregnancy" means pregnancy,
childbirth, or medical conditions related to pregnancy or childbirth,
including recovery from childbirth.

For the purposes of this subsection, in determining whether an
accommodation would impose undue hardship on the operation of
an employer's business, the factors to be considered include: the
overall size of the employer's business with respect to the number
of employees, number and type of facilities, and size of budget; the
type of the employer's operations, including the composition and
structure of the employer's workforce; the nature and cost of the
accommodation needed, taking into consideration the availability of
tax credits, tax deductions, and outside funding; and the extent to
which the accommodation would involve waiver of an essential
requirement of a job as opposed to a tangential or non-business
necessity requirement.

1. For an employer to pay any of its employees at a rate of
compensation, including benefits, which is less than the rate paid by
the employer to employees of the other sex for substantially similar
work, when viewed as a composite of skill, effort and
responsibility. An employer who is paying a rate of compensation
in violation of this subsection shall not reduce the rate of
compensation of any employee in order to comply with this
subsection. An employer may pay a different rate of compensation
only if the employer demonstrates that the differential is made
pursuant to a seniority system, a merit system, or the employer
demonstrates:

(1) That the differential is based on one or more legitimate, bona
fide factors other than sex, such as training, education or
experience, or the quantity or quality of production;

(2) That the factor or factors do not perpetuate a sex-based
differential in compensation;

(3) That each of the factors is applied reasonably;

(4) That one or more of the factors account for the entire wage
differential; and

(5) That the factors are job-related with respect to the position
in question and based on a legitimate business necessity. A factor
based on business necessity shall not apply if it is demonstrated that
there are alternative business practices that would serve the same
business purpose without producing the wage differential.

Comparisons of wage rates shall be based on wage rates in all of
an employer's operations or facilities.

(cf: P.L.2013, c.220, s.2)
2. Section 16 of P.L.1945, c.169 (C.10:5-17) is amended to read as follows:

16. If, upon all evidence at the hearing, the director shall find that the respondent has engaged in any unlawful employment practice or unlawful discrimination as defined in this act, the director shall state his findings of fact and conclusions of law and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful employment practice or unlawful discrimination and to take such affirmative action, including, but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay, or restoration to membership, in any respondent labor organization, or extending full and equal accommodations, advantages, facilities, and privileges to all persons, as, in the judgment of the director, will effectuate the purpose of this act, and including a requirement for report of the manner of compliance. If the conduct violative of this act constitutes any form of unlawful economic discrimination prohibited in section 11, subsections 1, m., [and] or n. of this act, section 11 of P.L.1945, c.169 (C.10:5-12), or any form of unlawful employment practice prohibited by subsection r. or t. of section 11 of P.L.1945, c.169 (C.10:5-12), the affirmative action taken by the director may include the award of three-fold damages to the person or persons aggrieved by the violation. The director shall have the power to use reasonably certain bases, including but not limited to list, catalogue or market prices or values, or contract or advertised terms and conditions, in order to determine particulars or performance in giving appropriate remedy.

In addition to any other remedies provided by P.L.1945, c.169 (C.10:5-1 et seq.), a prevailing complainant may recover damages to compensate for emotional distress caused by the activities found to be in violation of P.L.1945, c.169 (C.10:5-1 et seq.) to the same extent as is available in common law tort actions.

In any case in which the director, Attorney General, or appropriate organization is a complainant, on behalf of named or unnamed individuals or a class of individuals, any of the remedies or relief allowed by this act may be awarded or applied to the named or unnamed individual victims of discrimination. If, upon all evidence, the director shall find that the respondent has not engaged in any such unlawful practice or unlawful discrimination, the director shall state his findings of fact and conclusions of law and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent.

(cf. P.L.2003, c.180, s.16)

3. (New section) a. Any employer, regardless of the location of the employer, who enters into a contract with a public body to provide qualifying services to the public body shall provide a report to the Commissioner of Labor and Workforce Development, in a
form issued by regulation promulgated by the commissioner, of
information regarding the gender, race, job title, occupational
category, and total compensation of every employee of the
employer employed in the State in connection with the contract.
The employer shall provide the commissioner, throughout the
duration of the contract or contracts, with an update to the report
each time there is a significant change in any of the information that
the employer is required to report pursuant to this section, or other
significant change in employment status, including, but not limited
to, medical leave of 12 weeks or more, hiring, termination for any
reason, a change in part-time or full-time status, or a change in
“employee” or “contractor” status.

b. Any employer, regardless of the location of the employer,
who enters into a contract with a public body to perform any public
work for the public body shall provide to the commissioner, through
certified payroll records required pursuant to P.L.1963,
c.150 (C.34:11-56.25 et seq.), information regarding the gender,
race, job title, occupational category, and rate of total compensation
of every employee of the employer employed in the State in
connection with the contract. The employer shall provide the
commissioner, throughout the duration of the contract or contracts,
with an update to the information whenever payroll records are
required to be submitted pursuant to P.L.1963, c.150 (C.34:11-
56.25 et seq.).

c. The commissioner shall retain the information provided by
the employer during any period of time that one or more contracts
are in effect between the employer and any public body and not less
than five years after the end of that period. The retained
employment information shall be made available by the
commissioner to the Division on Civil Rights in the Department of
Law and Public Safety, and, upon request, provided to anyone who
is or was an employee of the employer during the period of any of
the contracts between the employer and any public body, or any
authorized representative of the employee.

d. For the purposes of the section:
“Public body” means the State or any agency or instrumentality
of the State;
“Public work” means public work as defined in section 2 of
P.L.1963, c.150 (C.34:11-56.26) and which is subject to the
provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.). Public work
shall not include the provision of goods or products.
“Qualifying services” means the provision of any service to the
State or to any other public body, except for public work as defined
in section 2 of P.L.1963, c.150 (C.34:11-56.26).
“Service” means any act performed in exchange for payment,
including the provision of professional services, but shall not
include the sale of goods or products.
4. This act shall take effect immediately.

STATEMENT

This bill modifies current law, including the Law Against Discrimination, P.L.1945, c.169 (C.10:5-1 et seq.) ("LAD"), to strengthen protections against employment discrimination and promote equal pay for women.

The bill amends the LAD to make it an unlawful employment practice for an employer to discriminate between employees on the basis of sex by paying a rate of compensation, including benefits, to employees of one sex less than the rate paid to employees of the other sex for substantially similar work, when viewed as a composite of skill, effort and responsibility. The bill prohibits any employer paying a rate in violation of the bill from reducing the rate of compensation of any employee in order to comply with the bill. The bill permits an employer to pay a different rate of compensation if the employer demonstrates that the differential is made pursuant to a seniority system or a merit system, or is based on legitimate, bona fide factors other than sex, such as training, education, experience, or the quantity or quality of production, that each factor is applied reasonably, that one or more of the factors account for the entire wage differential, and that the factor or factors do not perpetuate a sex-based differential in compensation, are job-related and based upon legitimate business necessities.

The bill also amends the LAD to prohibit an employer from taking reprisals against an employee for disclosing information about job titles, occupational categories, rates of compensation, gender, race, ethnicity, military status, or national origin of employees or former employees. It prohibits an employer from requiring, as a condition of employment, any employee or prospective employee to waive rights under the law.

The bill provides for the awarding of three-fold damages for violations of its provisions.

The bill further provides that a discriminatory compensation decision or other employment practice that is unlawful under the LAD occurs each occasion that compensation is paid in furtherance of that discriminatory decision or practice. This provision thus restarts the applicable statute of limitations governing discriminatory compensation claims under the LAD, effectively making each paycheck another instance of the discriminatory compensation decision or other practice and therefore a new or continuing violation. In addition, the bill provides that liability shall accrue and an aggrieved person may obtain relief for back pay for the entire period of time in which the violation has been continuous, if the violation continues to occur within the statute of limitations.
The bill provides that nothing in the LAD will prohibit
application of the doctrine of "continuing violation" or the
"discovery rule" to any appropriate claim as those doctrines
currently exist in New Jersey common law. The bill also makes it a
violation of the LAD for an employer to require an employee to
agree to any reduction of any applicable statute of limitation.

Finally, the bill requires an employer entering into a contract
with the State to provide information concerning every employee
employed in connection with the contract, including information
regarding the employee's gender, race, job title, occupational
category, and total compensation, and report specified significant
changes in employee status during the contract. The Commissioner
of Labor and Workforce Development is required to retain and
make the information available to the Division of Civil Rights, and,
upon request, employees and their authorized representatives.