

ASSEMBLY, No. 4515

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED JANUARY 19, 2017

Sponsored by:

Assemblywoman JOANN DOWNEY

District 11 (Monmouth)

Assemblyman ERIC HOUGHTALING

District 11 (Monmouth)

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

SYNOPSIS

Concerns equal pay and employment opportunities for women.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/28/2017)

A4515 DOWNEY, HOUGHTALING

2

1 AN ACT concerning discrimination and equal pay and amending
2 P.L.1945, c.169.

3

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

6

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

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

11 a. For an employer, because of the race, creed, color, national
12 origin, ancestry, age, marital status, civil union status, domestic
13 partnership status, affectional or sexual orientation, genetic
14 information, pregnancy, sex, gender identity or expression,
15 disability or atypical hereditary cellular or blood trait of any
16 individual, or because of the liability for service in the Armed
17 Forces of the United States or the nationality of any individual, or
18 because of the refusal to submit to a genetic test or make available
19 the results of a genetic test to an employer, to refuse to hire or
20 employ or to bar or to discharge or require to retire, unless justified
21 by lawful considerations other than age, from employment such
22 individual or to discriminate against such individual in
23 compensation or in terms, conditions or privileges of employment;
24 provided, however, it shall not be an unlawful employment practice
25 to refuse to accept for employment an applicant who has received a
26 notice of induction or orders to report for active duty in the armed
27 forces; provided further that nothing herein contained shall be
28 construed to bar an employer from refusing to accept for
29 employment any person on the basis of sex in those certain
30 circumstances where sex is a bona fide occupational qualification,
31 reasonably necessary to the normal operation of the particular
32 business or enterprise; provided further that nothing herein
33 contained shall be construed to bar an employer from refusing to
34 accept for employment or to promote any person over 70 years of
35 age; provided further that it shall not be an unlawful employment
36 practice for a club exclusively social or fraternal to use club
37 membership as a uniform qualification for employment, or for a
38 religious association or organization to utilize religious affiliation
39 as a uniform qualification in the employment of clergy, religious
40 teachers or other employees engaged in the religious activities of
41 the association or organization, or in following the tenets of its
42 religion in establishing and utilizing criteria for employment of an
43 employee; provided further, that it shall not be an unlawful
44 employment practice to require the retirement of any employee
45 who, for the two-year period immediately before retirement, is

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.

1 employed in a bona fide executive or a high policy-making position,
2 if that employee is entitled to an immediate non-forfeitable annual
3 retirement benefit from a pension, profit sharing, savings or
4 deferred retirement plan, or any combination of those plans, of the
5 employer of that employee which equals in the aggregate at least
6 \$27,000.00; and provided further that an employer may restrict
7 employment to citizens of the United States where such restriction
8 is required by federal law or is otherwise necessary to protect the
9 national interest.

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

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

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

37 c. For any employer or employment agency to print or circulate
38 or cause to be printed or circulated any statement, advertisement or
39 publication, or to use any form of application for employment, or to
40 make an inquiry in connection with prospective employment, which
41 expresses, directly or indirectly, any limitation, specification or
42 discrimination as to race, creed, color, national origin, ancestry,
43 age, marital status, civil union status, domestic partnership status,
44 affectional or sexual orientation, gender identity or expression,
45 disability, nationality, pregnancy, or sex or liability of any applicant
46 for employment for service in the Armed Forces of the United
47 States, or any intent to make any such limitation, specification or

1 discrimination, unless based upon a bona fide occupational
2 qualification.

3 d. For any person to take reprisals against any person because
4 that person has opposed any practices or acts forbidden under this
5 act or because that person has filed a complaint, testified or assisted
6 in any proceeding under this act, or to coerce, intimidate, threaten
7 or interfere with any person in the exercise or enjoyment of, or on
8 account of that person having aided or encouraged any other person
9 in the exercise or enjoyment of, any right granted or protected by
10 this act.

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

14 f. (1) For any owner, lessee, proprietor, manager, superintendent,
15 agent, or employee of any place of public accommodation directly
16 or indirectly to refuse, withhold from or deny to any person any of
17 the accommodations, advantages, facilities or privileges thereof, or
18 to discriminate against any person in the furnishing thereof, or
19 directly or indirectly to publish, circulate, issue, display, post or
20 mail any written or printed communication, notice, or advertisement
21 to the effect that any of the accommodations, advantages, facilities,
22 or privileges of any such place will be refused, withheld from, or
23 denied to any person on account of the race, creed, color, national
24 origin, ancestry, marital status, civil union status, domestic
25 partnership status, pregnancy, sex, gender identity or expression,
26 affectional or sexual orientation, disability or nationality of such
27 person, or that the patronage or custom thereof of any person of any
28 particular race, creed, color, national origin, ancestry, marital status,
29 civil union status, domestic partnership status, pregnancy status,
30 sex, gender identity or expression, affectional or sexual orientation,
31 disability or nationality is unwelcome, objectionable or not
32 acceptable, desired or solicited, and the production of any such
33 written or printed communication, notice or advertisement,
34 purporting to relate to any such place and to be made by any owner,
35 lessee, proprietor, superintendent or manager thereof, shall be
36 presumptive evidence in any action that the same was authorized by
37 such person; provided, however, that nothing contained herein shall
38 be construed to bar any place of public accommodation which is in
39 its nature reasonably restricted exclusively to individuals of one
40 sex, and which shall include but not be limited to any summer
41 camp, day camp, or resort camp, bathhouse, dressing room,
42 swimming pool, gymnasium, comfort station, dispensary, clinic or
43 hospital, or school or educational institution which is restricted
44 exclusively to individuals of one sex, provided individuals shall be
45 admitted based on their gender identity or expression, from
46 refusing, withholding from or denying to any individual of the
47 opposite sex any of the accommodations, advantages, facilities or
48 privileges thereof on the basis of sex; provided further, that the

1 foregoing limitation shall not apply to any restaurant as defined in
2 R.S.33:1-1 or place where alcoholic beverages are served.

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

16 In addition to the penalties otherwise provided for a violation of
17 P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2)
18 of subsection f. of this section is the holder of an alcoholic beverage
19 license issued under the provisions of R.S.33:1-12 for that private
20 club or association, the matter shall be referred to the Director of
21 the Division of Alcoholic Beverage Control who shall impose an
22 appropriate penalty in accordance with the procedures set forth in
23 R.S.33:1-31.

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

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

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

46 (3) To print, publish, circulate, issue, display, post or mail, or
47 cause to be printed, published, circulated, issued, displayed, posted
48 or mailed any statement, advertisement, publication or sign, or to

1 use any form of application for the purchase, rental, lease,
2 assignment or sublease of any real property or part or portion
3 thereof, or to make any record or inquiry in connection with the
4 prospective purchase, rental, lease, assignment, or sublease of any
5 real property, or part or portion thereof which expresses, directly or
6 indirectly, any limitation, specification or discrimination as to race,
7 creed, color, national origin, ancestry, marital status, civil union
8 status, domestic partnership status, pregnancy, sex, gender identity,
9 or expression, affectional or sexual orientation, familial status,
10 disability, nationality, or source of lawful income used for rental or
11 mortgage payments, or any intent to make any such limitation,
12 specification or discrimination, and the production of any such
13 statement, advertisement, publicity, sign, form of application,
14 record, or inquiry purporting to be made by any such person shall
15 be presumptive evidence in any action that the same was authorized
16 by such person; provided, however, that nothing contained in this
17 subsection shall be construed to bar any person from refusing to
18 sell, rent, lease, assign or sublease or from advertising or recording
19 a qualification as to sex for any room, apartment, flat in a dwelling
20 or residential facility which is planned exclusively for and occupied
21 by individuals of one sex to any individual of the exclusively
22 opposite sex on the basis of sex provided individuals shall be
23 qualified based on their gender identity or expression;

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

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

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

38 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
39 sale, rental, lease, assignment, or sublease any real property or part
40 or portion thereof to any person or group of persons or to refuse to
41 negotiate for the sale, rental, lease, assignment, or sublease of any
42 real property or part or portion thereof to any person or group of
43 persons because of race, creed, color, national origin, ancestry,
44 marital status, civil union status, domestic partnership status,
45 familial status, pregnancy, sex, gender identity or expression,
46 affectional or sexual orientation, disability, nationality, or source of
47 lawful income used for rental or mortgage payments, or to represent
48 that any real property or portion thereof is not available for

1 inspection, sale, rental, lease, assignment, or sublease when in fact
2 it is so available, or otherwise to deny or withhold any real property
3 or any part or portion of facilities thereof to or from any person or
4 group of persons because of race, creed, color, national origin,
5 ancestry, marital status, civil union status, domestic partnership
6 status, familial status, pregnancy, sex, gender identity or expression,
7 affectional or sexual orientation, disability or nationality;

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

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

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

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

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

16 (1) To discriminate against any person or group of persons
17 because of race, creed, color, national origin, ancestry, marital
18 status, civil union status, domestic partnership status, pregnancy,
19 sex, gender identity or expression, affectional or sexual orientation,
20 disability, familial status or nationality, in the granting,
21 withholding, extending, modifying, renewing, or purchasing, or in
22 the fixing of the rates, terms, conditions or provisions of any such
23 loan, extension of credit or financial assistance or purchase thereof
24 or in the extension of services in connection therewith;

25 (2) To use any form of application for such loan, extension of
26 credit or financial assistance or to make record or inquiry in
27 connection with applications for any such loan, extension of credit
28 or financial assistance which expresses, directly or indirectly, any
29 limitation, specification or discrimination as to race, creed, color,
30 national origin, ancestry, marital status, civil union status, domestic
31 partnership status, pregnancy, sex, gender identity or expression,
32 affectional or sexual orientation, disability, familial status or
33 nationality or any intent to make any such limitation, specification
34 or discrimination; unless otherwise required by law or regulation to
35 retain or use such information;

36 (3) (Deleted by amendment, P.L.2003, c.180).

37 (4) To discriminate against any person or group of persons
38 because of the source of any lawful income received by the person
39 or the source of any lawful rent payment to be paid for the real
40 property; or

41 (5) To discriminate against any person or group of persons
42 because that person's family includes children under 18 years of
43 age, or to make an agreement or mortgage which provides that the
44 agreement or mortgage shall be rendered null and void upon the
45 birth of a child. This paragraph shall not apply to housing for older
46 persons as defined in subsection mm. of section 5 of P.L.1945,
47 c.169 (C.10:5-5).

1 j. For any person whose activities are included within the
2 scope of this act to refuse to post or display such notices concerning
3 the rights or responsibilities of persons affected by this act as the
4 Attorney General may by regulation require.

5 k. For any real estate broker, real estate salesperson or
6 employee or agent thereof or any other individual, corporation,
7 partnership, or organization, for the purpose of inducing a
8 transaction for the sale or rental of real property from which
9 transaction such person or any of its members may benefit
10 financially, to represent that a change has occurred or will or may
11 occur in the composition with respect to race, creed, color, national
12 origin, ancestry, marital status, civil union status, domestic
13 partnership status, familial status, pregnancy, sex, gender identity or
14 expression, affectional or sexual orientation, disability, nationality,
15 or source of lawful income used for rental or mortgage payments of
16 the owners or occupants in the block, neighborhood or area in
17 which the real property is located, and to represent, directly or
18 indirectly, that this change will or may result in undesirable
19 consequences in the block, neighborhood or area in which the real
20 property is located, including, but not limited to the lowering of
21 property values, an increase in criminal or anti-social behavior, or a
22 decline in the quality of schools or other facilities.

23 l. For any person to refuse to buy from, sell to, lease from or
24 to, license, contract with, or trade with, provide goods, services or
25 information to, or otherwise do business with any other person on
26 the basis of the race, creed, color, national origin, ancestry, age,
27 pregnancy, sex, gender identity or expression, affectional or sexual
28 orientation, marital status, civil union status, domestic partnership
29 status, liability for service in the Armed Forces of the United States,
30 disability, nationality, or source of lawful income used for rental or
31 mortgage payments of such other person or of such other person's
32 spouse, partners, members, stockholders, directors, officers,
33 managers, superintendents, agents, employees, business associates,
34 suppliers, or customers. This subsection shall not prohibit refusals
35 or other actions (1) pertaining to employee-employer collective
36 bargaining, labor disputes, or unfair labor practices, or (2) made or
37 taken in connection with a protest of unlawful discrimination or
38 unlawful employment practices.

39 m. For any person to:

40 (1) Grant or accept any letter of credit or other document which
41 evidences the transfer of funds or credit, or enter into any contract
42 for the exchange of goods or services, where the letter of credit,
43 contract, or other document contains any provisions requiring any
44 person to discriminate against or to certify that he, she or it has not
45 dealt with any other person on the basis of the race, creed, color,
46 national origin, ancestry, age, pregnancy, sex, gender identity or
47 expression, affectional or sexual orientation, marital status, civil
48 union status, domestic partnership status, disability, liability for

1 service in the Armed Forces of the United States, or nationality of
2 such other person or of such other person's spouse, partners,
3 members, stockholders, directors, officers, managers,
4 superintendents, agents, employees, business associates, suppliers,
5 or customers.

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

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

19 n. For any person to aid, abet, incite, compel, coerce, or induce
20 the doing of any act forbidden by subsections l. and m. of section
21 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
22 do so. Such prohibited conduct shall include, but not be limited to:

23 (1) Buying from, selling to, leasing from or to, licensing,
24 contracting with, trading with, providing goods, services, or
25 information to, or otherwise doing business with any person
26 because that person does, or agrees or attempts to do, any such act
27 or any act prohibited by this subsection; or

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

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

47 p. Nothing in the provisions of this section shall affect the
48 ability of an employer to require employees to adhere to reasonable

1 workplace appearance, grooming and dress standards not precluded
2 by other provisions of State or federal law, except that an employer
3 shall allow an employee to appear, groom and dress consistent with
4 the employee's gender identity or expression.

5 q. (1) For any employer to impose upon a person as a condition
6 of obtaining or retaining employment, including opportunities for
7 promotion, advancement or transfers, any terms or conditions that
8 would require a person to violate or forego a sincerely held
9 religious practice or religious observance, including but not limited
10 to the observance of any particular day or days or any portion
11 thereof as a Sabbath or other holy day in accordance with the
12 requirements of the religion or religious belief, unless, after
13 engaging in a bona fide effort, the employer demonstrates that it is
14 unable to reasonably accommodate the employee's religious
15 observance or practice without undue hardship on the conduct of the
16 employer's business. Notwithstanding any other provision of law to
17 the contrary, an employee shall not be entitled to premium wages or
18 premium benefits for work performed during hours to which those
19 premium wages or premium benefits would ordinarily be
20 applicable, if the employee is working during those hours only as an
21 accommodation to his religious requirements. Nothing in this
22 subsection q. shall be construed as reducing:

23 (a) The number of the hours worked by the employee which are
24 counted towards the accruing of seniority, pension or other benefits;
25 or

26 (b) Any premium wages or benefits provided to an employee
27 pursuant to a collective bargaining agreement.

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

44 (3) (a) For purposes of this subsection q., "undue hardship"
45 means an accommodation requiring unreasonable expense or
46 difficulty, unreasonable interference with the safe or efficient
47 operation of the workplace or a violation of a bona fide seniority

1 system or a violation of any provision of a bona fide collective
2 bargaining agreement.

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

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

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

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

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

20 (d) (i) The provisions of this subsection q. shall be applicable
21 only to reasonable accommodations of religious observances and
22 shall not supersede any definition of undue hardship or standards
23 for reasonable accommodation of the disabilities of employees.

24 (ii) This subsection q. shall not apply where the uniform
25 application of terms and conditions of attendance to employees is
26 essential to prevent undue hardship to the employer. The burden of
27 proof regarding the applicability of this subparagraph (d) shall be
28 upon the employer.

29 r. For any employer to take reprisals against any employee for
30 requesting from, or disclosing to, any other employee or former
31 employee of the employer, a lawyer from whom the employee seeks
32 legal advice, or any government agency information regarding the
33 job title, occupational category, and rate of compensation, including
34 benefits, of the employee or any other employee or former
35 employee of the employer, or the gender, race, ethnicity, military
36 status, or national origin of the employee or any other employee or
37 former employee of the employer, regardless of whether the request
38 was responded to, if the purpose of the request for the information
39 was to assist in investigating the possibility of the occurrence of, or
40 in taking of legal action regarding, potential discriminatory
41 treatment concerning pay, compensation, bonuses, other
42 compensation, or benefits, or to require, as a condition of
43 employment, any employee or prospective employee to sign a
44 waiver, or to otherwise require an employee or prospective
45 employee to agree, not to make those requests or disclosures.
46 Nothing in this subsection shall be construed to require an
47 employee to disclose such information about the employee herself
48 to any other employee or former employee of the employer or to

1 any authorized representative of the other employee or former
2 employee.

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

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

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

43 t. (1) For an employer to:

44 (a) pay any of its employees at a rate of compensation, including
45 benefits, which is less than the rate paid by the employer to
46 employees of the other sex for substantially similar work, when
47 viewed as a composite of skill, effort and responsibility. An
48 employer who is paying a rate of compensation in violation of this

1 subsection shall not reduce the rate of compensation of any
2 employee in order to comply with this subsection; or

3 (b) provide less favorable employment opportunities on the
4 basis of sex.

5 (2) An employer may pay a different rate of compensation or
6 provide less favorable employment opportunities only if the
7 employer demonstrates that the differential or the availability of an
8 opportunity is made pursuant to a seniority or merit system that
9 does not discriminate on the basis of sex, or the employer
10 demonstrates that:

11 (a) the differential or opportunity is based on one or more
12 legitimate, bona fide factors other than sex, including, but not
13 limited to, training, education or experience, or the quantity or
14 quality of production;

15 (b) the factor or factors do not perpetuate a sex-based
16 differential in compensation or less favorable employment
17 opportunities on the basis of sex;

18 (c) each of the factors is applied reasonably;

19 (d) one or more of the factors account for the entire wage
20 differential or less favorable employment opportunity. Prior salary
21 shall not, by itself, justify any disparity in compensation or less
22 favorable employment opportunity; and

23 (e) the factors are job-related with respect to the position in
24 question and based on a legitimate business necessity. A factor
25 based on business necessity shall not apply if it is demonstrated that
26 there are alternative business practices that would serve the same
27 business purpose without producing the wage differential or less
28 favorable employment opportunity.

29 For purposes of this subsection, an employee shall be deemed to
30 work at the same establishment as another employee if the
31 employees work for the same employer at workplaces located in the
32 same county of the State.

33 (3) As used in this subsection, “less favorable employment
34 opportunity” means:

35 (a) assigning or directing an employee into a less favorable
36 career track or position;

37 (b) failing to provide information about promotions or
38 advancement in the full range of career tracks offered by the
39 employer; or

40 (c) limiting or depriving an employee of employment
41 opportunities that would otherwise be available to the employee but
42 for the employee’s sex.

43 (cf: P.L.2013, c.220, s.2)

44

45 2. This act shall take effect on the first day of the third month
46 next following enactment.

STATEMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

This bill modifies 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 also makes it an unlawful employment practice for an employer to provide less favorable employment opportunities on the basis of an employee’s sex.

The bill permits an employer to pay a different rate of compensation or to provide less favorable employment opportunities if the employer demonstrates that the differential or opportunity availability is made pursuant to a seniority or merit system that does not discriminate on the basis of sex.

The bill provides that a pay differential or less favorable employment opportunity may also be based on legitimate, bona fide factors other than sex, including, but not limited to, training, education, experience, or the quantity or quality of production. The employer must demonstrate that each factor is applied reasonably and that one or more of the factors account for the entire wage differential or opportunity availability. Prior salary may not, by itself, justify any disparity in compensation or less favorable employment opportunity. The employer must also demonstrate that the factors do not perpetuate a sex-based differential in compensation or less favorable employment opportunities on the basis of sex and that the factors 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.

For purposes of the bill, an employee is deemed to work at the same establishment as another employee if the employees work for the same employer at workplaces located in the same county of the State.