

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)

S104 WEINBERG, SWEENEY

2

1 AN ACT concerning equal pay for women and employment
2 discrimination, requiring public contractors to report certain
3 employment information, amending P.L.1945, c.169, and
4 supplementing P.L.1952, c.9 (C.34:11-56.1 et seq.).
5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:
8

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

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

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

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

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

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

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

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

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

46 b. For a labor organization, because of the race, creed, color,
47 national origin, ancestry, age, marital status, civil union status,
48 domestic partnership status, affectional or sexual orientation,

1 gender identity or expression, disability, pregnancy, or sex of any
2 individual, or because of the liability for service in the Armed
3 Forces of the United States or nationality of any individual, to
4 exclude or to expel from its membership such individual or to
5 discriminate in any way against any of its members, against any
6 applicant for, or individual included in, any apprentice or other
7 training program or against any employer or any individual
8 employed by an employer; provided, however, that nothing herein
9 contained shall be construed to bar a labor organization from
10 excluding from its apprentice or other training programs any person
11 on the basis of sex in those certain circumstances where sex is a
12 bona fide occupational qualification reasonably necessary to the
13 normal operation of the particular apprentice or other training
14 program.

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

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

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

41 f. (1) For any owner, lessee, proprietor, manager,
42 superintendent, agent, or employee of any place of public
43 accommodation directly or indirectly to refuse, withhold from or
44 deny to any person any of the accommodations, advantages,
45 facilities or privileges thereof, or to discriminate against any person
46 in the furnishing thereof, or directly or indirectly to publish,
47 circulate, issue, display, post or mail any written or printed
48 communication, notice, or advertisement to the effect that any of

1 the accommodations, advantages, facilities, or privileges of any
2 such place will be refused, withheld from, or denied to any person
3 on account of the race, creed, color, national origin, ancestry,
4 marital status, civil union status, domestic partnership status,
5 pregnancy, sex, gender identity or expression, affectional or sexual
6 orientation, disability or nationality of such person, or that the
7 patronage or custom thereof of any person of any particular race,
8 creed, color, national origin, ancestry, marital status, civil union
9 status, domestic partnership status, pregnancy status, sex, gender
10 identity or expression, affectional or sexual orientation, disability or
11 nationality is unwelcome, objectionable or not acceptable, desired
12 or solicited, and the production of any such written or printed
13 communication, notice or advertisement, purporting to relate to any
14 such place and to be made by any owner, lessee, proprietor,
15 superintendent or manager thereof, shall be presumptive evidence in
16 any action that the same was authorized by such person; provided,
17 however, that nothing contained herein shall be construed to bar any
18 place of public accommodation which is in its nature reasonably
19 restricted exclusively to individuals of one sex, and which shall
20 include but not be limited to any summer camp, day camp, or resort
21 camp, bathhouse, dressing room, swimming pool, gymnasium,
22 comfort station, dispensary, clinic or hospital, or school or
23 educational institution which is restricted exclusively to individuals
24 of one sex, provided individuals shall be admitted based on their
25 gender identity or expression, from refusing, withholding from or
26 denying to any individual of the opposite sex any of the
27 accommodations, advantages, facilities or privileges thereof on the
28 basis of sex; provided further, that the foregoing limitation shall not
29 apply to any restaurant as defined in R.S.33:1-1 or place where
30 alcoholic beverages are served.

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

44 In addition to the penalties otherwise provided for a violation of
45 P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2)
46 of subsection f. of this section is the holder of an alcoholic beverage
47 license issued under the provisions of R.S.33:1-12 for that private
48 club or association, the matter shall be referred to the Director of

1 the Division of Alcoholic Beverage Control who shall impose an
2 appropriate penalty in accordance with the procedures set forth in
3 R.S.33:1-31.

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

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

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

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

1 by individuals of one sex to any individual of the exclusively
2 opposite sex on the basis of sex provided individuals shall be
3 qualified based on their gender identity or expression;

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

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

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

18 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
19 sale, rental, lease, assignment, or sublease any real property or part
20 or portion thereof to any person or group of persons or to refuse to
21 negotiate for the sale, rental, lease, assignment, or sublease of any
22 real property or part or portion thereof to any person or group of
23 persons because of race, creed, color, national origin, ancestry,
24 marital status, civil union status, domestic partnership status,
25 familial status, pregnancy, sex, gender identity or expression,
26 affectional or sexual orientation, disability, nationality, or source of
27 lawful income used for rental or mortgage payments, or to represent
28 that any real property or portion thereof is not available for
29 inspection, sale, rental, lease, assignment, or sublease when in fact
30 it is so available, or otherwise to deny or withhold any real property
31 or any part or portion of facilities thereof to or from any person or
32 group of persons because of race, creed, color, national origin,
33 ancestry, marital status, civil union status, domestic partnership
34 status, familial status, pregnancy, sex, gender identity or expression,
35 affectional or sexual orientation, disability or nationality;

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

45 (3) To print, publish, circulate, issue, display, post, or mail, or
46 cause to be printed, published, circulated, issued, displayed, posted
47 or mailed any statement, advertisement, publication or sign, or to
48 use any form of application for the purchase, rental, lease,

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

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

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

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

43 (1) To discriminate against any person or group of persons
44 because of race, creed, color, national origin, ancestry, marital
45 status, civil union status, domestic partnership status, pregnancy,
46 sex, gender identity or expression, affectional or sexual orientation,
47 disability, familial status or nationality, in the granting,
48 withholding, extending, modifying, renewing, or purchasing, or in

1 the fixing of the rates, terms, conditions or provisions of any such
2 loan, extension of credit or financial assistance or purchase thereof
3 or in the extension of services in connection therewith;

4 (2) To use any form of application for such loan, extension of
5 credit or financial assistance or to make record or inquiry in
6 connection with applications for any such loan, extension of credit
7 or financial assistance which expresses, directly or indirectly, any
8 limitation, specification or discrimination as to race, creed, color,
9 national origin, ancestry, marital status, civil union status, domestic
10 partnership status, pregnancy, sex, gender identity or expression,
11 affectional or sexual orientation, disability, familial status or
12 nationality or any intent to make any such limitation, specification
13 or discrimination; unless otherwise required by law or regulation to
14 retain or use such information;

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

16 (4) To discriminate against any person or group of persons
17 because of the source of any lawful income received by the person
18 or the source of any lawful rent payment to be paid for the real
19 property; or

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

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

31 k. For any real estate broker, real estate salesperson or
32 employee or agent thereof or any other individual, corporation,
33 partnership, or organization, for the purpose of inducing a
34 transaction for the sale or rental of real property from which
35 transaction such person or any of its members may benefit
36 financially, to represent that a change has occurred or will or may
37 occur in the composition with respect to race, creed, color, national
38 origin, ancestry, marital status, civil union status, domestic
39 partnership status, familial status, pregnancy, sex, gender identity or
40 expression, affectional or sexual orientation, disability, nationality,
41 or source of lawful income used for rental or mortgage payments of
42 the owners or occupants in the block, neighborhood or area in
43 which the real property is located, and to represent, directly or
44 indirectly, that this change will or may result in undesirable
45 consequences in the block, neighborhood or area in which the real
46 property is located, including, but not limited to the lowering of
47 property values, an increase in criminal or anti-social behavior, or a
48 decline in the quality of schools or other facilities.

1 l. For any person to refuse to buy from, sell to, lease from or
2 to, license, contract with, or trade with, provide goods, services or
3 information to, or otherwise do business with any other person on
4 the basis of the race, creed, color, national origin, ancestry, age,
5 pregnancy, sex, gender identity or expression, affectional or sexual
6 orientation, marital status, civil union status, domestic partnership
7 status, liability for service in the Armed Forces of the United States,
8 disability, nationality, or source of lawful income used for rental or
9 mortgage payments of such other person or of such other person's
10 spouse, partners, members, stockholders, directors, officers,
11 managers, superintendents, agents, employees, business associates,
12 suppliers, or customers. This subsection shall not prohibit refusals
13 or other actions (1) pertaining to employee-employer collective
14 bargaining, labor disputes, or unfair labor practices, or (2) made or
15 taken in connection with a protest of unlawful discrimination or
16 unlawful employment practices.

17 m. For any person to:

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

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

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

45 n. For any person to aid, abet, incite, compel, coerce, or induce
46 the doing of any act forbidden by subsections l. and m. of section
47 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
48 do so. Such prohibited conduct shall include, but not be limited to:

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

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

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

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

31 q. (1) For any employer to impose upon a person as a
32 condition of obtaining or retaining employment, including
33 opportunities for promotion, advancement or transfers, any terms or
34 conditions that would require a person to violate or forego a
35 sincerely held religious practice or religious observance, including
36 but not limited to the observance of any particular day or days or
37 any portion thereof as a Sabbath or other holy day in accordance
38 with the requirements of the religion or religious belief, unless,
39 after engaging in a bona fide effort, the employer demonstrates that
40 it is unable to reasonably accommodate the employee's religious
41 observance or practice without undue hardship on the conduct of the
42 employer's business. Notwithstanding any other provision of law to
43 the contrary, an employee shall not be entitled to premium wages or
44 premium benefits for work performed during hours to which those
45 premium wages or premium benefits would ordinarily be
46 applicable, if the employee is working during those hours only as an
47 accommodation to his religious requirements. Nothing in this
48 subsection q. shall be construed as reducing:

1 (a) The number of the hours worked by the employee which are
2 counted towards the accruing of seniority, pension or other benefits;
3 or

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

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

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

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

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

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

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

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

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

1 (ii) This subsection q. shall not apply where the uniform
2 application of terms and conditions of attendance to employees is
3 essential to prevent undue hardship to the employer. The burden of
4 proof regarding the applicability of this subparagraph (d) shall be
5 upon the employer.

6 r. For any employer to take reprisals against any employee for
7 requesting from, or disclosing to, any other employee or former
8 employee of the employer, a lawyer from whom the employee seeks
9 legal advice, or any government agency information regarding the
10 job title, occupational category, and rate of compensation, including
11 benefits, of the employee or any other employee or former
12 employee of the employer, or the gender, race, ethnicity, military
13 status, or national origin of the employee or any other employee or
14 former employee of the employer, regardless of whether the request
15 was responded to, if the purpose of the request for the information
16 was to assist in investigating the possibility of the occurrence of, or
17 in taking of legal action regarding, potential discriminatory
18 treatment concerning pay, compensation, bonuses, other
19 compensation, or benefits, or to require, as a condition of
20 employment, any employee or prospective employee to sign a
21 waiver, or to otherwise require an employee or prospective
22 employee to agree, not to make those requests or disclosures.
23 Nothing in this subsection shall be construed to require an
24 employee to disclose such information about the employee herself
25 to any other employee or former employee of the employer or to
26 any authorized representative of the other employee or former
27 employee.

28 s. For an employer to treat, for employment-related purposes, a
29 woman employee that the employer knows, or should know, is
30 affected by pregnancy in a manner less favorable than the treatment
31 of other persons not affected by pregnancy but similar in their
32 ability or inability to work. In addition, an employer of an
33 employee who is a woman affected by pregnancy shall make
34 available to the employee reasonable accommodation in the
35 workplace, such as bathroom breaks, breaks for increased water
36 intake, periodic rest, assistance with manual labor, job restructuring
37 or modified work schedules, and temporary transfers to less
38 strenuous or hazardous work, for needs related to the pregnancy
39 when the employee, based on the advice of her physician, requests
40 the accommodation, unless the employer can demonstrate that
41 providing the accommodation would be an undue hardship on the
42 business operations of the employer. The employer shall not in any
43 way penalize the employee in terms, conditions or privileges of
44 employment for requesting or using the accommodation. Workplace
45 accommodation provided pursuant to this subsection and paid or
46 unpaid leave provided to an employee affected by pregnancy shall
47 not be provided in a manner less favorable than accommodations or
48 leave provided to other employees not affected by pregnancy but

1 similar in their ability or inability to work. This subsection shall
2 not be construed as otherwise increasing or decreasing any
3 employee's rights under law to paid or unpaid leave in connection
4 with pregnancy.

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

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

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

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

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

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

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

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

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

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

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

3 16. If, upon all evidence at the hearing, the director shall find
4 that the respondent has engaged in any unlawful employment
5 practice or unlawful discrimination as defined in this act, the
6 director shall state his findings of fact and conclusions of law and
7 shall issue and cause to be served on such respondent an order
8 requiring such respondent to cease and desist from such unlawful
9 employment practice or unlawful discrimination and to take such
10 affirmative action, including, but not limited to, hiring,
11 reinstatement or upgrading of employees, with or without back pay,
12 or restoration to membership, in any respondent labor organization,
13 or extending full and equal accommodations, advantages, facilities,
14 and privileges to all persons, as, in the judgment of the director, will
15 effectuate the purpose of this act, and including a requirement for
16 report of the manner of compliance. If the conduct violative of this
17 act constitutes any form of unlawful economic discrimination
18 prohibited in **【section 11, subsections】** subsection 1., m., **【and】** or
19 n. of **【this act,】** section 11 of P.L.1945, c.169 (C.10:5-12), or any
20 form of unlawful employment practice prohibited by subsection r.
21 or t. of section 11 of P.L.1945, c.169 (C.10:5-12), the affirmative
22 action taken by the director may include the award of three-fold
23 damages to the person or persons aggrieved by the violation. The
24 director shall have the power to use reasonably certain bases,
25 including but not limited to list, catalogue or market prices or
26 values, or contract or advertised terms and conditions, in order to
27 determine particulars or performance in giving appropriate remedy.
28 In addition to any other remedies provided by P.L.1945,
29 c.169 (C.10:5-1 et seq.), a prevailing complainant may recover
30 damages to compensate for emotional distress caused by the
31 activities found to be in violation of P.L.1945, c.169 (C.10:5-1 et
32 seq.) to the same extent as is available in common law tort actions.
33 In any case in which the director, Attorney General, or appropriate
34 organization is a complainant, on behalf of named or unnamed
35 individuals or a class of individuals, any of the remedies or relief
36 allowed by this act may be awarded or applied to the named or
37 unnamed individual victims of discrimination. If, upon all
38 evidence, the director shall find that the respondent has not engaged
39 in any such unlawful practice or unlawful discrimination, the
40 director shall state his findings of fact and conclusions of law and
41 shall issue and cause to be served on the complainant an order
42 dismissing the said complaint as to such respondent.

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

44

45 3. (New section) a. Any employer, regardless of the location
46 of the employer, who enters into a contract with a public body to
47 provide qualifying services to the public body shall provide a report
48 to the Commissioner of Labor and Workforce Development, in a

1 form issued by regulation promulgated by the commissioner, of
2 information regarding the gender, race, job title, occupational
3 category, and total compensation of every employee of the
4 employer employed in the State in connection with the contract.
5 The employer shall provide the commissioner, throughout the
6 duration of the contract or contracts, with an update to the report
7 each time there is a significant change in any of the information that
8 the employer is required to report pursuant to this section, or other
9 significant change in employment status, including, but not limited
10 to, medical leave of 12 weeks or more, hiring, termination for any
11 reason, a change in part-time or full-time status, or a change in
12 “employee” or “contractor” status.

13 b. Any employer, regardless of the location of the employer,
14 who enters into a contract with a public body to perform any public
15 work for the public body shall provide to the commissioner, through
16 certified payroll records required pursuant to P.L.1963,
17 c.150 (C.34:11-56.25 et seq.), information regarding the gender,
18 race, job title, occupational category, and rate of total compensation
19 of every employee of the employer employed in the State in
20 connection with the contract. The employer shall provide the
21 commissioner, throughout the duration of the contract or contracts,
22 with an update to the information whenever payroll records are
23 required to be submitted pursuant to P.L.1963, c.150 (C.34:11-
24 56.25 et seq.).

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

35 d. For the purposes of the section:

36 “Public body” means the State or any agency or instrumentality
37 of the State;

38 “Public work” means public work as defined in section 2 of
39 P.L.1963, c.150 (C.34:11-56.26) and which is subject to the
40 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.). Public work
41 shall not include the provision of goods or products.

42 “Qualifying services” means the provision of any service to the
43 State or to any other public body, except for public work as defined
44 in section 2 of P.L.1963, c.150 (C.34:11-56.26).

45 “Service” means any act performed in exchange for payment,
46 including the provision of professional services, but shall not
47 include the sale of goods or products.

1 4. This act shall take effect immediately.

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STATEMENT

5

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

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

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

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

36 The bill further provides that a discriminatory compensation
37 decision or other employment practice that is unlawful under the
38 LAD occurs each occasion that compensation is paid in furtherance
39 of that discriminatory decision or practice. This provision thus
40 restarts the applicable statute of limitations governing
41 discriminatory compensation claims under the LAD, effectively
42 making each paycheck another instance of the discriminatory
43 compensation decision or other practice and therefore a new or
44 continuing violation. In addition, the bill provides that liability
45 shall accrue and an aggrieved person may obtain relief for back pay
46 for the entire period of time in which the violation has been
47 continuous, if the violation continues to occur within the statute of
48 limitations.

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1 The bill provides that nothing in the LAD will prohibit
2 application of the doctrine of “continuing violation” or the
3 “discovery rule” to any appropriate claim as those doctrines
4 currently exist in New Jersey common law. The bill also makes it a
5 violation of the LAD for an employer to require an employee to
6 agree to any reduction of any applicable statute of limitation.

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