

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 104

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 5, 2018

The Senate Labor Committee reports favorably, and with committee amendments, Senate Bill No. 104.

This bill, as amended by the committee, modifies current law, including the Law Against Discrimination, P.L.1945, c.169 (C.10:5-1 et seq.) (“LAD”), to strengthen protections against employment discrimination and promote equal pay for all groups protected from discrimination by the LAD.

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

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

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

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

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

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

This bill was pre-filed for introduction in the 2018-2019 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.