

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 104

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 13, 2018

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 104 (1R), with committee amendments.

As amended, this bill, entitled the “Diane B. Allen Equal Pay Act,” 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.

The bill amends the LAD to make it an unlawful employment practice for an employer to discriminate against an employee who is a member of a class protected against discrimination by paying a rate of compensation, including benefits, to employees of a protected class which is 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.

The bill changes 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. The bill prohibits an employer from requiring, as a condition of employment, any employee or prospective employee to waive rights under the law.

The bill provides that if the Director of the Division on Civil Rights finds that the respondent has engaged in any unlawful employment practice or unlawful discrimination as defined in the provisions of the act, the affirmative action taken by the director may include the awarding of three-fold damages to the person or persons aggrieved by the violation. The bill also provides that if a jury determines that an employer is guilty of an unlawful employment practice, the judge is required to award three times any monetary damages to the person or persons aggrieved by the violation.

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 is to accrue and an aggrieved person may obtain relief for back pay for a period not to exceed six years during 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, upon the commencement of the contract, a report concerning employees employed in connection with the contract, including information regarding the compensation and hours worked of employees by gender, race, ethnicity, and job category, and data regarding compensation and hours worked of employees is required to be report in the form by pay bands to be established by regulation promulgated by the Commissioner of Labor and Workforce Development. The commissioner is required to retain and make the information available to the Division of Civil Rights, and, upon request, employees and their authorized representatives.

COMMITTEE AMENDMENTS:

The amendments specify that the bill is to be known as the “Diane B. Allen Equal Pay Act.”

The amendments limit the period of time during which liability may accrue and provide that an aggrieved person may obtain relief for six years of back pay.

The amendments provide that if a jury determines that an employer is guilty of an unlawful employment practice, the judge is required to

award three times any monetary damages to the person or persons aggrieved by the violation.

The amendments alter certain reporting requirements to require employers to report at the commencement of the contract the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category, and data regarding compensation and hours worked of employees is required to be reported by pay bands to be established by regulation promulgated by the commissioner. The amendments also remove the requirement to report upon certain specified significant changes in employee status during the contract.

The amendments revise the effective date of the bill to July 1, 2018.

FISCAL IMPACT:

This bill has not been certified as requiring a fiscal note.