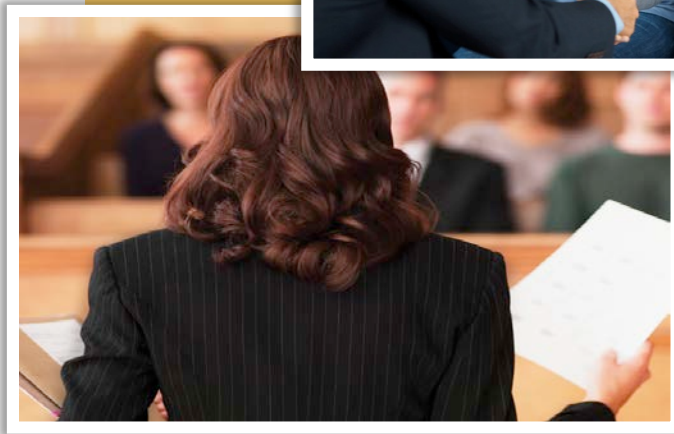


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NJ GFOA Northern Area Program & Social

March 22, 2019



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AGENDA

- 1- NJ Equal Pay Act
- 2- Paid Sick Leave
- 3- Interest Arbitration After Cap Expiration

NJ EQUAL PAY ACT

Diane B. Allen Equal Pay Act (the “Equal Pay Act”)

- Effective July 1, 2018
- Amended the NJLAD
 - Strengthens protections against employment discrimination
 - Promotes equal pay for women and employees in other protected categories

What Is Unlawful Under the Equal Pay Act?

- For an employer to pay any employee who is a member of a protected class less than the rate paid to other employees not members of that protected class for “substantially similar work when viewed as a composite of skill, effort and responsibility.”
- Expands equal pay on the basis of membership in the protected categories of the LAD

What are the Protected Categories under the LAD?

- Race
- Creed
- Color
- National origin
- Ancestry
- Age
- Marital status
- Civil union status
- Domestic partnership status
- Affectional or sexual orientation
- Genetic information
- Pregnancy or breastfeeding
- Sex
- Gender identity or expression
- Mental or physical disability (including HIV or AIDS)
- Atypical hereditary cellular or blood trait of any individual
- Liability for service in the armed forces

Limited Exceptions to the Equal Pay Act

- Limited exceptions where an employer may pay a different rate of compensation to members of a protected class
- Including where a pay differential is due to a seniority or a merit system

What Must Employers Show to Justify Pay Discrepancies?

1. Pay differential based on one or more legitimate, bona fide factors such as:
 - Training
 - Education
 - Experience
 - Quantity of production
 - Quality of production

What Must Employers Show to Justify Pay Discrepancies?

2. Factor(s) do not perpetuate differential in compensation based on sex or any other characteristic of members of a protected class

What Must Employers Show to Justify Pay Discrepancies?

3. Each of the factors is applied reasonably
4. One or more of the factors account for the entire wage differential

AND

5. Factors are job-related with respect to the position in question and based on a legitimate business necessity

**Key to have documentation to support any
differences in pay**

Penalties to Employers under the Equal Pay Act

- An unlawful employment practice occurs each time pay practices discriminate against an employee
- Employee can seek back pay for up to six (6) years
- Extends the LAD's normal, 2-year statute of limitations
- Fee shifting statute
- Not retroactive

Treble Damages under the Equal Pay Act

- For violations of the Equal Pay Act
- To an employee who is retaliated against after requesting, discussing, or disclosing information regarding employee compensation or pay practices to:
 - Any other employee or former employee;
 - Their attorney; or
 - Any government agency

Treble Damages under the Equal Pay Act

- To employees who are asked to sign a waiver regarding discussing or disclosing pay practices or raises

Recommendations

- Review hiring and compensation practices
- Confirm pay equity for employees who perform “substantially similar work”
- Review employment contracts, policies, and separation agreements regarding confidentiality

NEW JERSEY PAID SICK LEAVE ACT

Eligible Employees

- Applies to most employees working “for compensation”
- Applies to full-time and part-time employees

Eligible Employees

Does NOT apply to:

- **Employees in the construction industry** working under collective bargaining agreements
- **Per diem healthcare employees**
- **Public employees** who already have sick leave benefits pursuant to law

-
- Per Civil Service “full-time local employees” referenced in N.J.A.C. 4A:1-3(a) means ALL employees – whether classified or unclassified.
 - Therefore, Civil Service takes the position that even unclassified Civil Service employees are provided sick leave by law and therefore are NOT covered by the NJ Paid Sick leave act.

-
- Part-timers still get pro-rated sick leave by statute, so they are also not covered by the new Act.
 - This may mean no changes for municipal employees with regard to paid sick leave.

Covered Employers

- All private sector employers with employees, including temporary help service firms
- There is no small-employer exemption, and out-of-state employers with only a few employees in NJ are covered

Accrual Period

- Employers must designate any period of 12 consecutive months as a “benefit year.”
 - E.g. January 1 – December 31 or fiscal year
- Informal Guidance: Cannot use employee’s work anniversary date

Accrual Period

- Before changing established benefit year, the employer must first notify the New Jersey Department of Labor and Workforce Development at least 30 calendar days prior to the proposed change.

Accrual of Paid Sick Leave

Accrual Minimums

1. During each benefit year, an employee will accrue **up to 40 hours of sick time** at a rate of one hour for every 30 hours worked.
2. Employer has the option to frontload the full 40 hours at the beginning of the benefit year.

Accrual Method

Employees must earn 1 hour of paid sick leave for every 30 hours *actually worked*, beginning on the 1st day of the benefit year, up to a maximum of 40 hours per year.

Front-load Method

Employers may grant the full 40 hours of sick leave to employees on the 1st day of the benefit year

- More simplified bookkeeping
- Immediate use of paid sick leave for employees

Accrual of Paid Sick Leave

Accrual Limits

- *Employers with existing paid time off (“PTO”), vacation days, personal days, and sick-day policies may use these policies to satisfy the requirements of the Act **so long as employees can use their time off as required by the Act.***
- Employers are **NOT** required to allow employees to accrue more than 40 hours of sick leave in a benefit year

Accrual of Paid Sick Leave: Terminated Employees

If an employee is terminated or leaves employment, **NOT** entitled to payment of unused earned sick leave **unless an employer contract, policy, or collective bargaining agreement states otherwise.**

Accrual of Paid Sick Leave: Returning Employees

- If employee is terminated or leaves employment AND the employee is reinstated or rehired in NJ within 6 months, **any unused earned sick leave accrued by the employee prior to the separation MUST be returned to the employee upon rehire or reinstatement.**

Accrual of Paid Sick Leave: Transferring Employees

If an employee is transferred but remains employed by same employer, the employee **MUST be entitled to all earned, accrued sick leave.**

Use of Paid Sick Leave

- Not required to allow employees to use earned sick leave until the 120th calendar day after the employee commences employment, whichever is later.
 - Employer may permit employee to use earned sick leave prior to the 120-calendar-day period.

Five Allowable Uses for Paid Sick Leave

1. Employee's own mental or physical illness, injury, or other adverse health condition, including preventive medical care

Five Allowable Uses for Paid Sick Leave

2. Aid or care for a covered family member

Five Allowable Uses for Paid Sick Leave

3. Circumstances related to an employee's or their covered family member's status as a victim of domestic or sexual violence
 - includes need to obtain related medical treatment, seek counseling, relocate, or participate in related legal services

Five Allowable Uses for Paid Sick Leave

4. Closure of an employee's workplace or of a school/childcare of an employee's child as a result of a public official's order relating to a public health emergency

Five Allowable Uses for Paid Sick Leave

5. Time to attend a meeting requested or required by school staff to discuss the employee's child's health condition or disability.

Who is a Covered “Family Member” Under the New Jersey Paid Sick Leave Act?

A covered “family member” includes:

- Individuals related by blood to the employee (e.g. child, grandchild, sibling, spouse, domestic partner, civil union partner, parent, grandparent, and sibling of a spouse)
- Individuals whose close association with the employee is the **“equivalent of a family relationship”**

Who is a Covered “Family Member” Under the New Jersey Paid Sick Leave Act?

- Presumption that request is valid
- Expansive entitlement to paid leave

Employee Replacements and Pay Under the New Jersey Paid Sick Leave Act

- Employer may **NOT** require an employee to find a replacement to cover the employee in his/her absence.
- For earned sick leave, employer **MUST** pay the employee the same rate of pay with the same benefits the employee normally earns.

Foreseeable Sick Leave

- Employee's need to use earned sick leave is considered **“foreseeable”** when employee is able to predict or know in advance that he or she will need to use earned sick leave.
- Employer may require **advance notice, not to exceed 7 calendar days** prior to the date the leave is to begin, of:
 - Intention to use the leave; and
 - Expected duration of leave.

Foreseeable Sick Leave

- Employers must provide **reasonable notice** to its employees of those “certain dates” on which its employees are prohibited from using foreseeable earned sick leave.

Notice When Use of Earned Sick Leave is Not Foreseeable

- Employer may require an employee to give notice of the intention as soon as practicable.
- For earned sick leave of 3 or more consecutive days, employer may require reasonable documentation that leave is being taken for a permissible purpose.

Reasonable Documentation Requirements

- The requirements for reasonable documentation vary depending on the reason an employee uses earned sick leave

Carryover of Sick Time and Working Additional Hours

- Maximum Carryover: Employers NOT required to permit employees to carry over **more than 40 hours** of accrued sick time in a single benefit year
- With employer's consent, employee **may work additional hours** to compensate for the hours of work missed **rather than use earned sick leave**

Pay During Earned Sick Leave

- An employee's **taking of earned sick leave MUST NOT result in any diminution in the employee's benefits** (for purposes of employee benefits, when an employee takes earned sick leave, it is as if the employee worked those hours)

Carry Over of Unused Sick Leave

- Accrual method:
 - Employee has right to carry over
 - Employer can offer payment (100% or 50%)
- Frontloading method:
 - Employer can choose to carry over or pay out
- Separation from employment:
 - No right to have time paid out

Payment to Employees for Unused Sick Leave

- Proposed Regulations: if employer chooses to pay out its employees, cannot switch to the accrual method the next year
- Informal Guidance: can only be paid at the end of the designated benefit year

Employer Duty to Protect Employee Information

- Any information employer has regarding “the health of an employee or any family member of the employee or domestic or sexual violence affecting an employee or employee’s family member” **MUST** be:
 - **Treated as confidential**; and
 - **Not disclosed** except to affected employee OR with the written permission of affected employee.

No Retaliation under NJ Paid Sick Leave Act

- Employers **MUST NOT** take retaliatory personnel action or **discriminate against employee** because:
 - Employee requests or uses earned sick leave; or
 - Employee files complaint with the State of NJ alleging the employer's violation of any provision of the NJ Paid Sick Leave Act; or
 - Employee informs any other person of their rights under the NJ Paid Sick Leave Act.

No Retaliation under NJ Paid Sick Leave Act

- Employers **MUST NOT** count earned sick leave as an absence that may result in the employee being subject to discipline, discharge, demotion, suspension, a loss or reduction of pay, or any other adverse action.

Rebuttable Presumption of Retaliation Under the NJ Paid Sick Leave Act

- Whenever employer takes an adverse action against employee within 90 days of employee engaging in a protected activity, there is a rebuttable presumption of an unlawful retaliatory personnel action

Protected Activities under NJ Paid Sick Leave Act

- Filing Complaint alleging a violation of any provision of the NJ Paid Sick Leave Act
- Informing any person about employer's alleged violation of the NJ Paid Sick Leave Act

Protected Activities under NJ Paid Sick Leave Act

- Cooperating with the State or other persons in the investigation or prosecution of any alleged violation of the NJ Paid Sick Leave Act
- Opposing any policy, practice, or act that is unlawful under the NJ Paid Sick Leave Act
- Informing any person of their rights under the NJ Paid Sick Leave Act

Recordkeeping Under the NJ Paid Sick Leave Act

- Employers **MUST** retain records documenting hours worked by employees and earned sick leave taken by employees for a period of **five (5) years**.
- Employers **MUST**, upon demand, allow the Department of Labor and Workforce Development access to those records to monitor compliance with the NJ Paid Sick Leave Act.

Recordkeeping Under the NJ Paid Sick Leave Act

If employee makes claim that employer failed to provide earned sick leave, AND employer has not kept adequate records documenting hours worked by the employee and earned sick leave taken by the employee, OR, if employer does not allow the State access to the records:

- **Presumption that the employer has failed to provide the earned sick leave**
- **Presumption can only be rebutted by clear and convincing evidence**

Notice Under the NJ Paid Sick Leave Act

- Employers must provide notification to employees of their rights under the NJ Paid Sick Leave Act.
- Notification must include:
 - Amount of earned sick leave to which the employee is entitled
 - Terms of use of sick leave
 - Remedies provided by NJ Paid Sick Leave Act to employees if employer fails to provide required benefits OR retaliates against employees exercising their rights

Notice Under the NJ Paid Sick Leave Act

- Employers must conspicuously post the notification in place accessible to all employees in each of the employers' workplaces.
- Employers must provide each employee with written copy of the notification as follows:
 - No later than 30 days after the notification is issued; and
 - When employee hired, if employee hired after issuance of notification; and
 - At any time, when first requested by employee.

Notice Under the NJ Paid Sick Leave Act

- Employers **MUST** use the notification in English, Spanish, and other language for which the State has provided notifications and which is the first language of a majority of the employer's workforce.

PREPARING FOR INTEREST ARBITRATION SINCE THE INTEREST ARBITRATION CAP EXPIRED

-
- In June, 2014, Governor Christie signed into law a bill that revised police and fire interest arbitration law, N.J.S.A. 34:13A-16 through N.J.S.A. 34:13A-16.9. The amended law, was retroactive to April 2, 2014 and expired on December 31, 2017.
 - Under the prior law, arbitration awards were subject to a 2% cap on base salary, provided the contract had an expiration date on or after Jan 1, 2011 through December 31, 2017.
 - The 2% cap has now expired.

-
- Revert to prior strategy in collective bargaining with police and fire contracts, now that the two percent (2%) cap expired.
 - Expect increase in interest arb petitions due to expiration of 2% hard cap for many CBAs that expired on 12/31/18.
 - Sunset of 2% hard cap does not change other statutory standards or time frames.
 - Preparation is key!

PREPARE

- Gather all relevant and important information that is pertinent to negotiations;
 - Analyze info; and
 - Manipulate the information for leverage at the bargaining table.
- Filing of an interest arb petition may occur after 3 negotiation sessions or after expiration of CBA
- Responding party has 5 days after receipt of petition to respond-
- All issues must be listed or they are waived.

-
- May want to avoid interest arbitration due to the uncertainty involved in the outcome as well as associated costs
 - But, if proceed:
 1. Be better prepared;
 2. Understand what entitled to;
 3. Gather all necessary facts to support or argue against proposals communicated at the bargaining table;
 4. Make clear and unambiguous proposals that support the economic and non-economic goals; and
 5. Be sure goals are realistic, reasonable and obtainable at Interest Arbitration.

Timelines have been shortened:

1. Negotiations for fire or police shall begin at least 120 days prior to CBA expiration;
2. Three meetings required during the 120 day period, and 1st meeting no later than 90 days prior to CBA expiration;
3. First business day after receipt of interest arbitration petition, arbitrator will be randomly selected by PERC;
4. Arbitrator decision shall be rendered within 90 calendar days of assignment- with a written report;

Arbitrator fee capped at \$1,000/day and \$10,000 max.

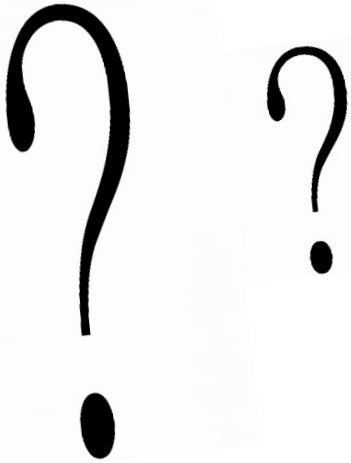
Arbitrator shall decide dispute based on 9 factors (per N.J.S.A. 34:13A-16(g)):

1. Public interests and welfare;
2. Comparison of wages, salaries, hours and conditions of employment;
3. Overall compensation presently received by employees;
4. Stipulations;
5. Lawful authority and limitations on employer;
6. Financial impact on governing unit and residents, and limitations upon tax levy and taxpayers;
7. Cost of living;
8. Continuity and stability of employment; and
9. Statutory restrictions on employer.

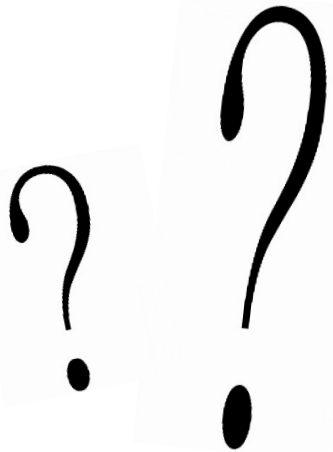
The 90 days will run quickly!

- Be prepared prior to filing petition- ID all issues; written summation of evidence to mediator.
- Financial impact and compliance with the tax levy cap and appropriations cap should be evaluated.
- Be clear as to what proposals mean to taxpayers.
- Explain impacts on budget and municipal services.

Questions?



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