

# EXPECT THE UNEXPECTED

## JUST THE "FAQ'S" - THE NEW JERSEY EQUAL PAY ACT

### 1. What is the Diane B. Allen New Jersey Equal Pay Act?

The Act is a new law that amends the New Jersey Law Against Discrimination (the "LAD") and makes it illegal to offer lower pay and benefits to women or any other protected class for similar jobs.

The Act is one of the strongest pay equity laws that has ever been enacted in the United States, and it impacts all private and public-sector businesses with employees in New Jersey.

### 2. When does the Equal Pay Act become effective?

The Act will go into effect on July 1, 2018.

### 3. How does the Equal Pay Act affect New Jersey businesses?

The Equal Pay Act prohibits inequality in compensation for employees that perform "substantially similar work", unless the inequality is based on

- a seniority or merit system, or
- "legitimate, bona fide factors" such as training, education or experience, so long as the factors (i) are not based on or do not perpetuate a class-based differential, (ii) are applied reasonably, (iii) account for the entire wage differential, and (iv) are job related and based on legitimate business necessity.

The Act also prohibits reprisal against an employee for discussing with or disclosing his/her or any other employee's compensation, with any other current or former employee of the business

### 4. Does the Equal Pay Act contain new State reporting requirements?

**Yes.** Employers that do business with the State or any State agency must disclose to the State employee compensation, by gender, race, ethnicity, and job category.

### 5. What are the penalties for an Equal Pay Violation?

The Act permits an employee to seek up to 6 years of back pay under the LAD, instead of the typical two-year limitation under the LAD. Moreover, the Courts are directed to award triple damages in the event of a jury verdict against an employer on an unequal pay claim, as well as reasonable attorneys fees and costs.

### 6. Can employers remedy any pay gap by reducing compensation to higher-paid employees?

**No.** The Equal Pay Act expressly forbids employers from reducing compensation to any employee for the purpose of complying with the Act.

### 7. Can employers limit their exposure under the Equal Pay Act in their hiring documents, employee handbooks, and internal policies?

**Yes and No.** Employers cannot require employees to waive any claims under the new provisions of the Act as a condition of their employment. However, employers can, and must, reevaluate their compensation policies, position descriptions, and other internal documentation to become fully compliant.

### 8. So what should employers do to comply with the law?

Employers must carefully review their existing worker census data to ensure that compensation is fairly applied based upon merit and seniority and create internal documents establishing their methodology for same.

OlenderFeldman offers a comprehensive HR audit and reporting system called **HIRES**, which addresses this specific legal compliance issue among many others.

If you have any questions concerning the new Equal Pay Act or your compliance obligations concerning same, please contact OlenderFeldman's Employment Practices Group.



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