

ANOTHER MANDATORY NOTICE FOR NEW JERSEY EMPLOYERS EFFECTIVE NOVEMBER 21, 2012

By Scott J. Wenner

New Jersey Governor Chris Christie has signed A2647, a new law requiring employers in New Jersey with 50 or more employees to both post and distribute a notice concerning the employees' rights to be free from gender-based discrimination in the terms and conditions of their employment. While the law technically will become effective on November 21, compliance will not be required until 30 days after the New Jersey Commissioner of Labor and Workplace Development has approved and published the exact content of the notice, which could take some time.

Existing federal and state law posters already notify employees of their rights to be free from discrimination in terms and conditions of employment, including compensation, based on sex. See, *New Jersey Law Against Discrimination*, C.10:5-1, *et seq.*, C.34:11-56.1, *et seq.*, *Title VII of the Civil Rights Act of 1964*, 42 U.S.C. s.2000e, *et seq.*, and the *Equal Pay Act*, 29 U.S.C. s.206(d) and posters. The imposition of this arguably duplicative posting requirement is symptomatic of the increased attention being paid at all levels of government to alleged pay discrimination against women.

Who Must Comply?

A2647 is not a model of clarity. While it was amended before passage to limit its applicability to New Jersey employers with at least 50 employees, the new law does not specify whether the 50 employees must be in New Jersey. It appears that the 50-employee requirement means 50 employees *anywhere*.

What Must Covered Employers Do?

All covered employers will be required to do the following at each of their New Jersey workplaces:

1. Post an easily accessible notice in language developed by the New Jersey Commissioner of Labor and Workplace Development, of the "right to be free of gender inequity or bias in pay, compensation, benefits or other terms or conditions of employment" under existing federal and state laws.
2. Distribute the approved form of notice (a) to all existing employees within 30 days of publication of the approved notice; (b) to all new hires; (c) annually on or before December 31 to all existing employees; and (d) upon the first request of an employee.
3. Obtain a signed acknowledgment from each employee within 30 days of the employee's receipt of the notice that the employee received and understands the notice.
4. Post and distribute the notice in English and in whatever other languages the Commissioner makes it available if the employer has reason to believe that the language is the first language of a significant number of employees.

How Are the Notices to Be Distributed?

A2647 directs employers to distribute the individual employee notices in one of the following ways:

1. E-mail delivery;
2. Delivery of printed material as a pay check insert, in the form of a brochure or informational packet provided to new hires, an attachment to an employee manual or handbook provided to the employee, a flyer distributed at an employee meeting, or by a similar effective method; and
3. Posting on an Internet or Intranet website, if (a) the site is for the exclusive use of all employees, (b)

(continued on page 2)

(continued from page 1)

can be accessed by all employees, and (c) the employer provides effective notice to all employees of its posting.

In each case, the employee must be provided with an acknowledgment form, which must be signed and returned within 30 days of distribution of the notice.

More Clarity Is Needed

In addition to the need for precision over the exact coverage of A2647 noted above, questions remain over the consequences of failing to comply with the new law: e.g., what monetary penalties (if any) there will be; whether the failure to post or distribute the required notice will subject the employer to a greater amount or likelihood of punitive damages in the event of a successful sex discrimination claim against it; and whether the failure to post might affect the statute of limitations applicable to claims for sex discrimination against it. ♦

This summary of legal issues is published for informational purposes only. It does not dispense legal advice or create an attorney-client relationship with those who read it. Readers should obtain professional legal advice before taking any legal action.

For more information about Schnader's Labor and Employment Practices Group or to speak with a member of the Firm at a particular Schnader office location, please contact:

*Scott J. Wenner, Chair
212-973-8115; 415-364-6705
swenner@schnader.com*

*Michael J. Wietzychowski, Vice Chair
856-482-5723; 215-751-2823
mwietzychowski@schnader.com*

www.schnader.com

©2012 Schnader Harrison Segal & Lewis LLP