New Jersey Expands Law Against Discrimination to Address Age Discrimination

What You Should Know:

On October 5, 2021, New Jersey Governor Phil Murphy signed into law new legislation that expands the scope of the New Jersey Law Against Discrimination (NJLAD) in order to combat age discrimination in the state. Senator Shirley Turner, a prime sponsor of Assembly Bill No. A681, indicated that the goal of expanding protections against age discrimination is to protect employees who "might otherwise be forced into retirement before they are ready." The bill, which was approved unanimously by both the New Jersey State Senate and Assembly, includes four provisions that protect against age discrimination and are consistent with Governor Murphy's goal of prohibiting ageism that "hurts the employees who are being discriminated, as well as the organization itself."

Changes in the Law

The NJLAD prohibits discrimination and harassment based on actual or perceived race, religion, national origin, gender, sexual orientation, gender identity or expression, disability, and other protected characteristics, including age. The new law amends the statute to extend protections against age discrimination.

First, A681 repeals the statutory provision allowing governmental employers to force employees to retire at certain ages if the employer can show "that the retirement age bears a manifest relationship to the employment in question[.]" This relinquishment of the government's authority to force employees to retire at certain arbitrarily defined ages will affect how New Jersey organizes its own workforce. State employers will now be required to grant employees the chance to work later in their careers as long as they can adequately perform their official responsibilities. Significantly, state employers must be sure that age is not a part of its evaluation criteria when reviewing employees' performances so as to avoid any possible inference that it is participating in age discrimination when deciding to terminate an employee or limit an employee's work hours.

In addition, the new law removes the provision of Section 11 of the NJLAD stating that "nothing herein contained shall be construed to bar an employer from refusing to accept for employment or to promote any person over 70 years." The intended effect of the removal of this language is to bar employers from refusing "to hire persons for the sole reason of being more than 70 years old." New Jersey residents will now be able to seek employment after turning 70 years old, which is significant as data indicates that New Jersey employees now work later into their lives. Employers should be careful not view a prospective employee's age as a disqualifier or even a relevant factor when determining whether to extend offers of employment.

Next, Section 5 of the NJLAD has been amended to include that "in a claim of unlawfully being required to retire because of age, an employee has available all of the remedies provided by any applicable law, instead of, as that section currently provides, being limited to filing a complaint with the Attorney General and having relief limited to reinstatement with back pay and interest." The amendment of Section 5 is significant because it imposes a broader scheme by which employees can obtain relief if they are victims of age discrimination.

Employees now have the ability to obtain "all of the remedies provided by any applicable law" rather than merely "back pay and interest." Employers are now subject to greater exposure in the event that they do impose a requirement that employees retire because of their age.

Finally, due to the repeal of Section 4 of the NJLAD, institutions of higher education will no longer be permitted to require tenured employees at colleges and universities to retire at the age of 70. Similar to the provisions included above, institutions of higher education are now subject to the same prohibitions against using age as a factor when mandating employees' retirement. Institutions of higher education, like other employers, must consider that they are subject to heightened exposure if they mandate employees' retirement based on their age.

Next Steps

In light of the newly enacted anti-ageism provisions of the NJLAD and their notable impact on potential employer liability, it is imperative that both public and private sector employers review their hiring, promotion and retirement policies and practices to ensure that they do not contain impermissible criteria tied to age.

Please contact the authors of this Alert, **Maja M. Obradovic** and **Alexander W. Raap**, for additional information or to discuss your specific circumstances.

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