

The Lesser-Known Employment Laws of New Jersey

Most New Jersey attorneys are aware of the LAD and CEPA, but our state also has a number of lesser-known employment laws. In addition, the LAD itself contains some lesser-known provisions.

This article provides a brief overview of some of these laws, their requirements, and the repercussions for failing to abide by them.

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Most New Jersey attorneys are aware of the Law Against Discrimination (LAD) and the Conscientious Employee Protection Act (CEPA) which provide some of the broadest protections against discrimination, harassment, and retaliation in the country. However, New Jersey also has a number of lesser-known employment laws. In addition, the LAD has some lesser-known provisions. It is important for employers and employees to learn about these laws.

Employers that fail to comply with these laws may be subject to liability and penalties. Employees should also be aware of the laws so that they can receive their intended benefits and protections. These developments are also important for attorneys in order to be able to counsel their clients appropriately. A brief overview of

some of these laws, their requirements, and the repercussions for failing to abide by them, follows.

Unemployment Discrimination in Job Advertisements

New Jersey prohibits discrimination against the unemployed in job advertisements. N.J.S.A. §34:8B-1 et seq. Specifically, employers are not permitted to indicate that current employment is a requirement for job consideration. This law does not apply to provisions setting forth any other qualifications for a job, such as holding a professional or occupational license or having a minimum level of training. Furthermore, the law does not apply to a provision stating that only applicants who are currently employed by the employer will be considered. Employers that violate this statute are subject to a penalty of \$1,000 for a first violation, \$5,000 for the second, and \$10,000 for each subsequent violation.



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Social Media Privacy

New Jersey employers are prohibited from requiring current or prospective employees to provide usernames and passwords for their personal social media account or forcing employees to provide access to these accounts. N.J.S.A. §34:6B-5 et seq. Additionally, employers are subject to penalties for taking any adverse action against an employee for failing to provide such information. The penalty for a first violation can be up to \$1,000 and the penalty for each subsequent violation is \$2,500. This statute does not apply to employer issued devices or to any accounts or services provided by the employer or that the employee uses for business purposes. The statute also does not

prevent an employer from viewing or utilizing information about a current or prospective employee that is publicly accessible.

Discrimination Against Tobacco and Cannabis Users

New Jersey's "Smoking Law," N.J.S.A. §34:6B-1, prohibits discrimination or adverse employment actions against employees because they either do or do not use tobacco products, including cigarettes, smokeless tobacco, or chewing tobacco. This law applies to all employers in New Jersey, regardless of size. Aggrieved individuals must bring an action within one year after the alleged violation, and employers can be responsible for \$2,000 for a first offense and \$5,000 for each subsequent offense.

The only exception to the Smoking Law is if an employer has a rational basis that is reasonably related to the employment. Although there is little case law analyzing this statute, an unpublished Appellate Division decision, *Still v. Bd. of Review*, No. A-4310-10T3, 2012 N.J. Super. Unpub. LEXIS 1277 (App. Div. June 7, 2012), upheld a pest-control technician's ineligibility for unemployment benefits after he walked off the job when his employer told him that he could



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not smoke in a company vehicle. The employer had a rational basis for prohibiting smoking in the company car, mainly the reaction of nicotine with the pesticides in the car and the employer's interest in maintaining the value of the company vehicle.

New Jersey's new law permitting adult use of cannabis products contains similar provisions prohibiting discrimination against employees who use cannabis products in most cases. Employers can still impose alcohol and drug-free workplace policies and employers can still discipline employees who are under the influence of cannabis products at work. But, the fact that an employee uses cannabis products outside of work cannot be the basis for an employment decision such as hiring or firing, with

limited exceptions for certain employers with federal contracts.

Paid Meal Breaks

Pursuant to N.J.A.C. §12:56-5.2, if an employer requires an employee to remain at his or her workplace during a meal break, the employer must pay the employee for that break. Otherwise, time spent on a meal break is not counted toward hours worked under this provision. Additionally, employees under the age of 18 are entitled to an unpaid 30-minute meal period after five consecutive hours of work. Breaks of less than 30 minutes must be counted as paid work-time. N.J.S.A. §34:2-21.4.

The LAD's Lesser-Known Provisions

- *Screening Based on Salary History*

A section of the LAD, which became effective in July 2019, prohibits New Jersey employers from screening a job applicants based on the applicant's salary history, including but not limited to, the applicant's prior wages, salaries or benefits. N.J.S.A. §10:5-12.12. However, an employer can still consider salary history when determining salary, benefits, or other compensation, and can still verify an applicant's salary history if the applicant voluntarily provides the employer authorization to do so. An employer cannot consider an applicant's refusal to provide compensation information in making its hiring decisions. There are several exceptions to this law such as internal transfers and promotions. A violation of this law is subject to a \$1,000 penalty for the first violation, \$5,000 for the second, and \$10,000 for each subsequent violation. The law explicitly states that punitive damages are not an available remedy for a violation of this provision.

• *Discrimination Based on Marital Status*

The New Jersey Supreme Court has clarified that discrimination

based on marital status under the LAD is not limited to individuals who are either single or married. Instead, the LAD protects all employees who have declared that they are planning to marry, have separated from a spouse, have initiated divorce proceedings, or who have obtained a divorce. *Smith v. Millville Rescue Squad*, 225 N.J. 373, 379 (2016). However, the LAD does not prevent an employer from making a "legitimate business decision to discipline or terminate an employee whose personal life decisions, such as a marital separation or divorce, have disrupted the workplace or hindered the ability of the employee or others to do their job." Id.

• *Accommodations for Pregnant Employees*

In 2014, New Jersey's Law Against Discrimination was amended to specifically include pregnancy as a protected class. New Jersey prohibits pregnancy discrimination in the workplace and requires employers to provide pregnant employees with reasonable pregnancy-related accommodations upon request, absent showing of an undue hardship.

The definition of "pregnancy" includes: pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, including recovery from childbirth. An employee's request for reasonable pregnancy-related accommodations must be based on advice from a physician. Employers are prohibited from penalizing employees for requesting any such accommodation.

The 2014 Amendment to the LAD superseded a New Jersey Supreme Court decision which suggested that employers were not required to provide pregnancy-related accommodations. *Gerety v. Atl. City Hilton Casino Resort*, 184 N.J. 391 (2005). The statute effectively codified Chief Justice Poritz's dissent in that case which would have required employers to provide pregnancy-related accommodations. Id. at 408.

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