Labor & Employment Law

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The following is a brief summary of New Jersey state labor and employment laws. This summary is provided for information only and is not intended as legal advice. Employers should consult legal counsel for more specific guidance.

I. HIRING

A. CRIMINAL HISTORY INQUIRIES ("BAN THE BOX")

Employers with 15 or more employees (anywhere, not just in New Jersey) are prohibited from requiring applicants for employment for positions in New Jersey to disclose criminal record information until after the employer has conducted a first interview. Any such oral or written inquiry, including on an employment application or via an internet search of an applicant, is prohibited until after the employer has conducted a first interview. A covered employer is also prohibited from positing a job advertisement indicating that persons who have been arrested or convicted of a crime will not be considered for employment. Certain positions are excepted from these restrictions. Additionally, the law does not prohibit an employer from refusing to hire an applicant for employment based upon the applicant's criminal record (although employers must abide by any other state or federal laws that may limit consideration of an applicant's criminal record). Violations of the law can subject an employer to civil penalties, including a \$1,000 fine for the first violation, \$5,000 for the second violation, and \$10,000 for each subsequent violation. N.J.S.A. § 34:6B-11.

B. BACKGROUND CHECKS

Employers must comply with the New Jersey Fair Credit Reporting Act (NJFCRA) in addition to the federal FCRA when using a consumer reporting agency to conduct background checks (including criminal record and credit checks) on employees. For instance, under the NJFCRA, an employer must disclose to the employee the precise nature and scope of the investigation requested from a consumer reporting agency (rather than the topics that *might* be included) and must also provide employees with a written statement including the following language: "You have a right to obtain a copy of any investigative consumer report upon request." N.J.S.A. § 56:11-28 et seq. Additional New Jersey-specific language is required in the pre-adverse action notice.

C. DRUG TESTING

New Jersey does not have any statutory requirements regarding drug testing in the workplace and employers should be guided by case law. Generally, it is permissible for employers to engage in pre-employment testing, reasonable suspicion testing, and random testing of employees holding safety sensitive positions.

D. DISCRIMINATION AGAINST UNEMPLOYED

New Jersey law prohibits employers from publishing, in print or on the Internet, any advertisement for a job vacancy which: (1) makes current employment a qualification for the job; (2) indicates that applications of unemployed individuals will not be considered; or (3) states that only job applications of the employed will be considered. N.J.S.A. § 34:8b-1; N.J.A.C. § 12:67-1.3.

E. LIE DETECTOR TESTS

New Jersey employers are prohibited from influencing, requesting, or requiring employees or prospective employees to take or submit to a lie detector test as a condition of employment or continued employment with limited exception. Employers found to violate this law are guilty of a disorderly persons offense. N.J.S.A. § 2C:40A-1.



F. REPORTING OF NEW HIRES

All employers and labor organizations doing business in New Jersey must report to the New Jersey Department of Human Services: (1) the hiring of, or contracting with, any person who works in New Jersey and to whom the employer anticipates paying earnings; and (2) the rehiring or return to work of any employee who is laid off, furloughed, separated, granted a leave without pay, or terminated from employment in New Jersey. An employer must submit the information required within 20 days of the hiring, rehiring, or return to work of the employee, except an employer that transmits reports magnetically or electronically must report every 15 days in accordance with rules adopted by the Commissioner of Human Services. The report must contain: (1) the employee's full name; (2) the employee's address; (3) the employee's Social Security number; (4) the employee's date of hire; and (5) the employee's date of birth. N.J.S.A § 2A:17-56.61.

G. NEW HIRE NOTICES

Employers must give employees several notices at the time of hire. See the Mandatory Posters and Notices section below.

H. NOTICE OF PAY RATE

New Jersey employers must notify employees at the time of hire of their rate of pay and the regular payday. Employers must also notify employees of any changes in pay rates or pay days prior to the time of such changes. N.J.S.A. § 34:11-4.6.

II. CIVIL RIGHTS—NON-DISCRIMINATION/RETALIATION LAWS

A. NEW JERSEY LAW AGAINST DISCRIMINATION (NJLAD)

Discrimination Prohibited. The NJLAD prohibits discrimination in employment on the basis of race, creed, color, national origin, ancestry, nationality, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, sex, pregnancy, gender identity or expression, disability (actual or perceived) or atypical hereditary cellular or blood trait of any individual, or because of the liability for service in the Armed Forces of the United States, or because of the refusal to submit to a genetic test or make available the results of a genetic test to an employer. Unlike various federal laws (such as Title VII of the Civil Rights Act of 1964, Americans with Disabilities Act, Age Discrimination in Employment Act, etc.), the NJLAD applies to all employers regardless of the number of persons they employ. N.J.S.A. § 10:5-12.

Sexual Harassment. Sexual harassment is a prohibited form of sex discrimination under the NJLAD. There are generally two types of sexual harassment. Quid pro quo harassment occurs when an employer, or an employer's agent, implicitly or explicitly makes submission to sexual demands a condition of employment, such as a promotion or keeping employment. Hostile work environment harassment occurs when an employee is subjected to sexual, abusive, or offensive conduct because of his or her gender that is severe or pervasive enough to make a reasonable person of the employee's gender believe that the conditions of employment have been altered and the working environment has become hostile or abusive. Employers can minimize the risks of liability for harassment by instituting: (1) formal policies prohibiting harassment training, which should be mandatory for supervisors and managers, and be available to all employees of the organization; (4) effective sensing or monitoring mechanisms to check the trustworthiness of the policies and complaint structures; and (5) an unequivocal commitment from upper management that harassment will not be tolerated, and demonstration of that commitment by consistent practice.

Pregnancy. The NJLAD has a specific pregnancy discrimination provision that prohibits less favorable treatment of women based upon pregnancy and requires an employer to make reasonable accommodations for an employee's pregnancy-related needs when requested by the employee upon advice of her doctor (such as bathroom breaks, periodic rest, job restructuring, assistance with manual labor, etc., but not mandating additional leave).

Disability. New Jersey has a very broad interpretation of the term disability—essentially any condition, physical or non-physical, even a minor condition, could be considered a disability. The law requires an employer to reasonably



accommodate an employee's disability to the extent necessary to allow the disabled employee to perform the essential functions of the job, unless such accommodation would impose an undue hardship on the operation of the employer's business. N.J.S.A. § 10:5-4; N.J.A.C. § 13:13-2.5.

Religion. Employers must reasonably accommodate applicants' and employees' sincerely held religious beliefs such as allowing time off to observe the Sabbath or other holy days—unless doing so would impose an undue hardship on the employer. An "undue hardship" is an "accommodation requiring unreasonable expense or difficulty, unreasonable interference with the safe or efficient operation of the workplace, a violation of a bona fide seniority system or a violation of any provision of a bona fide collective bargaining agreement." The NJLAD contains two "safe harbor" provisions by specifically providing that: (1) "an accommodation shall be considered to constitute an undue hardship if it will result in the inability of an employee to perform the essential functions of the position in which he or she is employed;" and (2) no accommodation is required "where the uniform application of terms and conditions of attendance to employees is essential to prevent undue hardship to the employer." N.J.S.A. § 10:5-12(q).

Retaliation Prohibited. Employers are prohibited from taking reprisals against any person because that person has opposed practices or acts forbidden under the NJLAD or because that person has filed a complaint, testified, or assisted in any proceeding under the NJLAD. Employers are also prohibited from coercing or interfering with any person in the exercise or enjoyment of any right protected by the NJLAD. N.J.S.A. § 10:5-12(d).

Pay Equity Protections. Employers are prohibited from retaliating against employees who request from any other employee, former employee, or their authorized representative, information regarding the: (1) job title; (2) occupational category; (3) rate of compensation (including benefits); (4) gender; (5) race; (6) ethnicity; (7) military status; or (8) national origin of any other employee or former employee, if the request was made to assist in investigating or in taking legal action regarding potential discriminatory treatment concerning pay, compensation, bonuses, other compensation, or benefits. N.J.S.A. § 10:5-12(r).

Damages. Damages under the NJLAD are uncapped and allow for compensatory and punitive damages, lost wages, and attorneys' fees. N.J.S.A. § 10:5-13, § 10:5-27.1.

Required Postings/Notices. See the Mandatory Posters and Notices section below.

B. NEW JERSEY EQUAL PAY ACT

The New Jersey Equal Pay Act prohibits discrimination in the rate or method of payment of wages to any employee because of his or her sex. A differential in pay between employees based on a reasonable factor or factors other than sex is not unlawful. An employee may recover the full amount of the salary or wages due from the employer plus an additional equal amount as liquidated damages, plus attorneys' fees. N.J.S.A. § 34:11-56.1 to -56.8.

C. NEW JERSEY CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA)

CEPA prohibits retaliation against employees who engage in a broad range of whistle-blowing activities. Employers may not retaliate against an employee who: (1) discloses or threatens to disclose an activity or practice of the employer that the employee reasonably believes is in violation of a law, fraudulent, or criminal; (2) provides information to or testifies before a public body investigating an employer's violation of a law; or (3) objects to, or refuses to participate in, any activity that the employee reasonably believes is in violation of a law; fraudulent, criminal, or incompatible with a clear mandate of public policy. Licensed and certified health care professionals have additional enumerated protections. Recoverable damages are substantially similar to recoverable damages under the NJLAD. N.J.S.A. §34:19-3. See the Mandatory Posters and Notices section below for notice obligations.

D. WRONGFUL TERMINATION/PUBLIC POLICY

New Jersey recognizes common-law claims of wrongful discharge in violation of public policy (often called *Pierce* claims). An at-will employee must show that his or her discharge violated a substantial New Jersey public policy, such as serving on a jury, refusing to violate laws or regulations, reporting criminal conduct to public authorities, or pursuing statutory rights related to employment, such as workers' compensation benefits and medical leave.



III. WAGE AND HOUR LAWS

A. MINIMUM WAGE

Effective January 1, 2017, the New Jersey state minimum wage is \$8.44 per hour. The minimum wage will be automatically adjusted each September and increases will be implemented each January, based on inflation as determined by the consumer price index. Exceptions can be found in N.J.S.A. § 34:11-56a4. See the Mandatory Posters and Notices section below for notice obligations.

Local jurisdictions may enact a higher minimum wage rate. For example, the minimum wage for workers employed by the City of Jersey City is \$15.00 per hour.

B. OVERTIME

Employees must be paid overtime at a rate of 1.5 times their regular hourly wage for each hour worked over 40 per week. There is no daily, weekend, or holiday overtime requirement and no spread of hours requirement. Individuals employed in a bona fide executive, administrative, professional, or outside sales capacity are exempt from the overtime requirements. New Jersey utilizes the federal Fair Labor Standards Act (FLSA) definitions for these exemptions. N.J.A.C. § 12:56-7.1.

Trucking industry employers must pay employees whose work hours are regulated by the federal Motor Carrier Act an overtime rate of at least 1.5 times the state minimum wage. "Trucking industry employer" means any business primarily operating for the purpose of conveying property from one place to another by road or highway, including the storage and warehousing of goods and property. Covered employees include drivers, helpers, loaders, and mechanics, even though they may be exempt from the overtime requirements under the FLSA. N.J.S.A. § 34:11-56a4. An employer that meets the FLSA exemption but not the New Jersey exemption must pay employees overtime at a rate of 1.5 times their regular hourly wage.

C. COMPENSABLE TIME

All time an employee is required to be at his or her place of work or on duty must be counted as hours worked. An employee who reports for work at the employer's request must be paid for at least one hour at the applicable wage rate, except where the employer has made available to the employee the minimum number of hours agreed upon prior to commencement of work that day. N.J.A.C. § 12:56-5.5.

"On call" time need not be counted as hours worked when employees are not required to remain on the employer's premises and are free to engage in their own pursuits, subject to leaving word at their home or with their employer where they may be reached. If such an employee does go out on an on-call assignment, only the time actually spent making the call is considered hours worked. If on-call conditions are so restrictive that the employee is not free to use the time for his or her own benefit or if the calls are too frequent, the employee may be considered "engaged to wait" rather than "waiting to be engaged," so that the waiting time is considered hours worked. N.J.A.C. §12:56-5.6.

D. ROUNDING OF HOURS

Rounding practices are permissible in New Jersey so long as they are even-handed and do not result, over a period of time, in the failure to compensate employees properly for all the time they actually worked. N.J.A.C. § 12:56-5.8(b).

E. MEAL AND REST PERIODS

New Jersey meal and rest period requirements apply only to minors (under the age of 18). No minor may be permitted to work for more than five continuous hours without a break of at least 30 minutes for lunch. N.J.S.A. § 34:2-21.4.



F. CHILD LABOR

The New Jersey Child Labor Law requires that no minor (under the age of 18) may be employed unless the employer obtains and keeps on file an employment certification issued by a designated school official. No minor may work: (1) more than eight hours per day; (2) more than six consecutive days per week; or (3) more than 40 hours per week. Minors between the ages of 16 and 18 cannot work between the hours of 11 p.m. and 6 a.m. Minors under the age of 16 are prohibited from working before 7 a.m. or after 7 p.m. during the school year, except that minors age 14 or 15 may work until 9 p.m. (with a parent's or guardian's written permission) in a supermarket or other retail establishment, restaurant, or any occupation not prohibited by law during summer vacation (from the last day of school to Labor Day). Minors under the age of 16 may work no more than three hours per day on a school night and cannot work more than 18 hours per week during the school year. During summer vacation, minors under the age of 16 may work up to eight hours per day and no more than 40 hours per week.

Minors are also prohibited from working in certain industries and on or near certain equipment. For a full list of restricted occupations, see N.J.S.A. § 34:2-21.17; N.J.A.C. §§ 12:58-3.1 et seq., 12:58-4.1 et seq. See the Mandatory Posters and Notices section below for additional information.

G. TIME AND MODE OF PAYMENT

Every employer must pay the full amount of wages due to its employees at least twice per month, on regular pay days designated in advance, except that employees who are exempt from overtime may be paid only once per month on a regularly established schedule. Employees must be paid no more than 10 days after the end of the pay period for which the wages were earned. N.J.S.A. § 34:11-4.2.

Payment must be made in lawful money of the United States or with checks drawn on financial institutions where suitable arrangements are made for the cashing of such checks by employees without difficulty and for the full amount for which they were drawn. In lieu of directly paying an employee, an employer may pay wages by direct deposit or by depositing payment in a payroll debit card account so long as the employee consents in writing to such manner of payment, no fees are borne by the employees to collect payment in full, and other requirements that are set forth in N.J.A.C. § 12:55-2.4 are met.

Final payment of wages following the termination or voluntary leaving of employment must be made no later than the next regular pay day (which may not be more than 10 days from the end of the work period for which such wages were earned). N.J.A.C. § 12:55-2.4.

H. WAGE DEDUCTIONS

No employer may withhold or divert any portion of an employee's wages unless the employer is required or empowered to do so by New Jersey or federal law or unless the amounts withheld or diverted are pursuant to one of the specifically enumerated reasons set forth in New Jersey's Wage Payment Law. N.J.S.A §34:11-4.4.

I. FINAL PAYCHECK

Whenever an employee is separated from employment, for whatever reason, the employer must pay the employee all wages due no later than the regular payday for the pay period during which the employee's discharge took place, or, in the case of employees compensated in part or in full by an incentive system, a reasonable approximation of all wages due, until the exact amounts due can be computed. N.J.S.A. § 34:11-4.3.

J. WAGE CLAIMS

In case of a dispute over the amount of wages, the employer must pay, without condition and within the time set by the Wage Payment Law, all wages or parts of wages conceded by the employer to be due, leaving to the employee all remedies to which he or she might otherwise be entitled as to any balance claimed. The acceptance by an employee of such a payment does not constitute a release as to the balance of his or her claim and any release required by an employer as a condition to payment is unlawful, null, and void. N.J.S.A. § 34:11-4.8.



K. NEW JERSEY PREVAILING WAGE ACT

Contracts for public works must contain a provision stating the prevailing minimum wage that must be paid to workers employed to perform the contract. Public works contracts include any contract to which any public body is a party. The New Jersey Prevailing Wage Act applies to all contracts for public works in excess of \$2,000, or \$15,444 in the case of contracts to perform work for municipalities. N.J.S.A. § 34:11-56.25 et seq.

IV. LEAVE AND LEAVE BENEFITS LAWS

A. NEW JERSEY FAMILY LEAVE ACT (NJFLA)

The NJFLA requires covered employers to provide eligible employees up to 12 weeks of unpaid leave in a 24-month period for the birth or adoption of a child or the serious health condition of a child, spouse, civil union partner, parent, or parent-in-law. A covered employer is an employer with 50 or more employees, with at least one employee in New Jersey. An eligible employee is one who has been employed for at least 12 months within the state and for 1,000 base hours in the 12-month period immediately preceding the leave.

Unlike the federal Family and Medical Leave Act (FMLA), the NJFLA does not provide leave for an employee's own serious health condition. Leave taken for a reason covered by both the FMLA and the NJFLA runs concurrently under both laws. Leave taken for a reason covered only under one law runs against that law only. When an employee returns from NJFLA, the employee is entitled to reinstatement to the position he or she held before the leave, or if the position is no longer available, to an equivalent position of like seniority, status, employment benefits, and other terms and conditions of work. N.J.S.A. § 34:11B-1 et seq.

Employers that maintain employee personnel manuals are required to have a NJFLA policy contained therein. N.J.A.C. § 13:14-1.14(b). See the Mandatory Posters and Notices section below for additional notice obligations.

B. NEW JERSEY FAMILY LEAVE INSURANCE (NJFLI) AND TEMPORARY DISABILITY INSURANCE (TDI)

Employees working for employers subject to the state unemployment compensation law are eligible for up to six weeks of family leave insurance benefits paid by the state when taking leave for a reason covered under the NJFLA. NJFLI benefits are two-thirds of an employee's regular weekly pay, up to a maximum of \$615 per week (effective January 1, 2016). NJFLI benefits are not available to employees taking leave for their own serious health condition, although employees who suffer non-work related injuries or illnesses may be eligible for up to 26 weeks of state TDI benefits up to a maximum of \$615 per week (effective January 1, 2016). Even small employers that are not covered by the NJFLA may be covered by the NJFLI, provided they are subject to the state unemployment compensation law. See the Mandatory Posters and Notices section below for notice obligations.

C. NEW JERSEY SECURITY AND FINANCIAL EMPOWERMENT ACT (SAFE ACT)

An eligible employee working in New Jersey for an employer with at least 25 employees: (1) who is a victim of an incident of domestic violence or a sexually violent offense; or (2) whose child, parent, spouse, domestic partner, or civil union partner is such a victim, is entitled to 20 days of unpaid leave in the 12-month period following the incident of domestic violence or sexual assault. An eligible employee is one who has been employed for at least 12 months and at least 1,000 base hours during the 12-month period immediately preceding the leave. The leave may be taken consecutively or intermittently in intervals of no less than one day, for reasons including, but not limited to: seeking medical attention for or recovering from physical or psychological injuries caused by domestic or sexual violence to the employee 's relative; obtaining psychological or other counseling for the employee or the employee 's relative; obtaining psychological or other counseling for the employee or the employee is negative; obtaining the SAFE Act, the NJFLA, or the FMLA will run concurrently under each respective leave law. See the Mandatory Posters and Notices section below for notice obligations.



D. MILITARY LEAVE

Any non-temporary employee who has successfully returned from military service, remains qualified for his or her former position, and applies for reemployment within 90 days after service ended, must be restored to his or her prior position or to a position of like seniority, status, and pay, unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so. If the circumstances of an employer have so changed because of reasons of economy or efficiency as to make it impossible or unreasonable to restore a serviceperson, such employer must restore such person to any available position, if requested by such person, for which the person is able or qualified to perform the duties. Similar provisions apply to employees participating in training for up to three months during any four-year period, or participating in the militia or Army Reserves. N.J.S.A. §38:23C-20.

E. VOTING LEAVE

New Jersey has no law providing employees time off to vote. However, employers are prohibited from threatening or causing injury to any employee to induce the employee to vote or refrain from voting for any particular candidate or because the employee voted or refrained from voting for any particular candidate at any election. N.J.S.A. § 19:34-27 et seq.

F. PAID SICK LEAVE

New Jersey employers with employees in Jersey City, Newark, East Orange, Irvington, Montclair, Passaic, Paterson, Bloomfield, Elizabeth, New Brunswick, Plainfield, Morristown, and Trenton must comply with those cities' local paid sick leave laws.

Under the Jersey City ordinance, private employers operating in Jersey City with 10 or more employees must provide up to 5 paid sick days each year to any employee who works in Jersey City for at least 80 hours in one year. Employers with fewer than 10 employees are required to provide up to 24 hours of paid sick leave time and 16 hours of unpaid sick time each year to employees who work in Jersey City for at least 80 hours in one year. Full-time and part-time employees will earn one hour of sick time for every 30 hours worked (up to 40 hours per year). Sick days may be used for various mental or physical conditions involving employees or their family members.

Under the Newark ordinance, employers with 10 or more employees must provide up to 40 hours of paid sick leave over a calendar year, and employers with less than 10 employees must provide up to 24 hours of paid sick leave over a calendar year. Employees covered by the ordinance will accrue at least one hour of paid sick leave for every 30 hours worked, and exempt employees are assumed to work 40 hours per week. Employees are permitted to "carry over" up to 40 hours of sick leave from year to year but the ordinance does not include a requirement to "pay out" accrued sick leave to discharged employees.

Under the New Brunswick ordinance, employers with business locations and at least five full time equivalent employees in the City of New Brunswick, and 10 or more employees anywhere, must provide full time employees (i.e., those working an average of at least 35 hour per week) one hour of paid sick time for every 35 hours worked within the City, up to a maximum of 40 hours per year. Employers must provide part-time employees (i.e., those working an average between 20 to 35 hours per week) up to 24 hours of paid sick time per year at the same accrual rate. New Brunswick-based employers with 5 to 9 employees anywhere may limit accruals of both full-time and part-time employees to 24 hours of paid sick time per year. Unless accrued but unused paid sick time is paid out at the end of the year, paid sick time must be carried over to the following calendar year, up to the employee's maximum annual paid sick time accrual, but no more than 40 hours of paid sick time may be used in any calendar year. Employers are not required to pay employees for accrued but unused sick time at the termination of employment.

The East Orange, Irvington, Montclair, Passaic, Paterson, Bloomfield, Elizabeth, Plainfield, Morristown, and Trenton ordinances are substantially similar to the Newark ordinance.

See the Mandatory Posters and Notices section below for the notice obligations under these municipal laws.



V. DISCHARGE

A. EMPLOYMENT AT WILL

The default rule in New Jersey is that, in the absence of a labor agreement or contract for employment for a specified term, employment is terminable at will. Employers have a right to discharge an employee at any time, for any reason, or for no reason, provided the termination is not for a reason prohibited by law. Personnel policy statements in handbooks can create an express or implied contract between an employer and an employee. For that reason, employee handbooks should contain a prominent, unambiguous written disclaimer clearly stating that nothing in the handbook alters the at-will employment relationship.

B. NEW JERSEY WARN

The New Jersey business closing/mass layoff notification law (i.e., New Jersey's mini-WARN Act), known officially as the "Millville Dallas Airmotive Plant Job Loss Notification Act," applies when an employer with 100 or more employees has operated an establishment for more than three years and either: (1) transfers or terminates operations at the establishment, resulting in the termination of employment of 50 or more employees over any continuous 30 day period; or (2) has a mass layoff that results in an employment loss at an establishment during any 30-day period for 500 or more full-time employees or an employment loss for 50 or more full-time employees representing one-third or more of the full-time employees at the establishment. In such cases, the employer must give 60 days' notice in a form approved by the NJDOL to each employee to be discharged, the chief elected official of the municipality, the Commissioner of the Department of Labor and Workforce Development, and when employees are represented by a union, to the highest elected official of that union. N.J.S.A. § 34:21-2. The state act affords fewer exemptions to notice delays than does the federal WARN Act, and damages can be far steeper.

VI. EMPLOYEE RECORDS AND NOTICES

A. PERSONNEL FILES

New Jersey does not have a law requiring general access to personnel files. However, in connection with state agency investigations, employers may be required to submit information concerning employment records of employees. N.J.A.C. § 13:4-4.2.

B. MANDATORY POSTERS AND NOTICES

In addition to any federal posters, most New Jersey private sector employers must conspicuously post and, in some instances, distribute various posters and notices.

State Department of Labor Notices and Posters (available at the <u>NJ DOL website</u>

http://lwd.state.nj.us/labor/lwdhome/content/employerpacketforms.html)

- Family Leave Insurance Poster (PR-2): Must be posted and personally provided to employees (1) at the time of hire, (2) upon request, and (3) whenever an employee provides notice to the employer that he or she will be taking family leave.
- Gender Equity Notice (AD-290): Must be posted and personally provided to all current employees and to employees (1) at the time of hire, (2) upon request, and (3) annually on or before December 31 each year. Employers must obtain written acknowledgement of receipt.
- **Poster Regarding Maintenance and Reporting of Employment Records** (MW-400): Must be posted **and** distributed to all current employees and all employees upon hire.
- **CEPA Poster** (AD-270): Must be completed and then posted. Additionally, for any employer with 10 or more employees, a copy of the notice must be personally distributed to all employees on an annual basis.
- New Jersey SAFE Act Poster (AD-289): Must be posted.
- Wage and Hour Law Abstract Poster (MW-220): Must be posted.



- Child Labor Law Abstract Poster (MW-129): Must be posted.
- **Payment of Wages Poster** (MW-17): Must be posted.
- Schedule of Minors' Hours (MW-191): Must be posted.
- Unemployment Compensation and Temporary Disability Benefits Poster (PR-1): Must be posted.
- Notice Regarding Unemployment Benefits (BC-10): Must be provided to all employees at the time of permanent or temporary separation of employment

State Division of Civil Rights Posters (available at NJ DCR website: http://www.nj.gov/oag/dcr/posters.html)

- **Discrimination in Employment Poster**: Must be posted.
- New Jersey Family Leave Act Poster: Must be posted.

Municipal Notices and Posters

Unless indicated otherwise, all posters must be posted **and** personally provided to employees at the time of hire (or as soon as practicable if the employee is already employed)

- Jersey City Sick Leave Poster: (available at: <u>http://www.jerseycitynj.gov/uploadedFiles/For_Businesses/Page_1_legal.pdf</u>).
- Newark Sick Leave Poster: (available at: <u>http://www.ci.newark.nj.us/wp-content/uploads/2015/06/Paid-Sick-Leave-NEW-FAQs-Posters-2.pdf</u>).
- Newark Sick Leave Notice: (available at: <u>http://www.ci.newark.nj.us/wp-content/uploads/2015/06/Paid-Sick-Leave-Employee-Rights-Posters.pdf</u>).
- Bloomfield Sick Leave Poster: (available at: <u>http://www.bloomfieldtwpnj.com/main/sites/default/files/press-</u>release/files/Template%20Paid%20Sick%20Leave%20Notice.pdf).
- **East Orange Sick Leave Poster:** (available at: <u>www.eastorange-nj.gov/wp-content/uploads/2015/06/PaidSickLeave.pdf</u>).
- Montclair Sick Leave Poster: (available at: <u>http://www.montclairnjusa.org/dmdocuments/Paid-Sick-Leave-Notice.pdf</u>).
- **Passaic Sick Leave Poster:** (available at: <u>http://www.cityofpassaic.com/vertical/sites/%7B3C98596C-</u> C765-4FBD-89C6-506904D063B7%7D/uploads/HumanServices-SickLeaveOrd-Notice(eng).pdf).
- **Passaic Sick Leave Notice:** (available at: <u>http://www.cityofpassaic.com/vertical/sites/%7B3C98596C-</u> <u>C765-4FBD-89C6-506904D063B7%7D/uploads/HumanServices-SickLeaveOrd-Notice(eng).pdf)</u>.
- **Paterson Sick Leave Poster:** (available at: http://www.patersonnj.gov/egov/docs/1428005994_711059.pdf).
- Trenton Sick Leave Poster: (available at: <u>http://www.trentonnj.org/documents/Health-Human-Services/Notice%20Poster%20of%20Employee%20Rights%20to%20Paid%20Sick%20Time%20%28English%29.pdf</u>).
- New Brunswick Sick Leave Poster: (available at: <u>http://thecityofnewbrunswick.org/planninganddevelopment/wp-content/uploads/sites/8/2015/12/Employer-Notice-English-1.pdf</u>).
- Plainfield Sick Leave Poster: (available at: <u>http://plainfieldnj.gov/docs2016/Earned%20Sick%20Time%20Information-English%20ver.pdf</u>).
- **Irvington, Morristown and Elizabeth**: Employers must display a poster **and** provide written notice to employees at the time of hire (or as soon as practicable if the employee is already employed). Sample posters and written notices were not issued by these municipalities and thus employers should prepare their own, with the assistance of counsel.

Employers must also post a workers' compensation notice, available through their insurance carrier.



VII. MISCELLANEOUS

A. COMMON LAW CLAIMS

New Jersey recognizes common law claims of wrongful discharge, intentional and negligent infliction of emotional distress, contractual interference, defamation, invasion of privacy, promissory estoppel, fraud, and negligent misrepresentation. Further, an employee can sue an employer for breach of an implied employment contract based on terms in an employee handbook limiting the employer's right to discharge. Workplace injuries are typically compensable only through workers' compensation, rather than from the employer.

B. BREASTFEEDING

A nursing mother has the right to breastfeed her child in any place of public accommodation where the mother is otherwise authorized to be present. Although the statute does not specifically mention employers, it can be construed to include places of employment. N.J.S.A. § 26:4B-4.

C. SMOKING

The New Jersey Smokers' Rights Act prohibits employers from making employment decisions based on an employee's smoking or other use of tobacco products outside the workplace, unless the decision is reasonably related to the employee's job. Employers may differentiate between smokers and nonsmokers with regard to life and health insurance. N.J.S.A §§ 34:6B-1 et seq. The New Jersey Smoke-Free Air Act prohibits smoking in indoor places and workplaces (with limited exceptions) to protect employees and the public from secondhand smoke. Further, the Smoke-Free Air Act requires the owner or operator of a commercial or other office building to prominently post at every public entrance a sign indicating that smoking is prohibited. The lettering or nonsmoking symbol must be in a contrasting color from the sign's background, and the sign must advise that violators will be subject to a fine. N.J.A.C. § 8:6-2.1.

D. NEW JERSEY COMPASSIONATE USE OF MARIJUANA ACT

The New Jersey Compassionate Use Medical Marijuana Act decriminalizes the use of marijuana for patients who legally use medical marijuana to alleviate symptoms or side effects of treatment relating to certain "debilitating medical conditions." The law specifically provides that employers have no obligation to accommodate medical use of marijuana "in the workplace." Presently unclear are the extent to which New Jersey employers must accommodate the use of medical marijuana outside of the workplace and whether employers may take an adverse employment action against an applicant or employee who tests positive for legally consumed medical marijuana. N.J.S.A. § 24:6I-1 et seq.

E. SOCIAL MEDIA PRIVACY LAW

New Jersey employers may not require or request any current or prospective employee to: (1) disclose his or her username or password relating to a personal social media account; (2) provide the employer access to his or her personal social media account; or (3) waive the rights and protections of the law as a condition of applying for or receiving an offer of employment. A protected "personal" social media account is one used by the applicant or employee *exclusively* for personal communications unrelated to any business purposes of the employer. The law does not prohibit employers from enforcing policies concerning the use of employer-issued electronic communications devices and does not infringe on an employer's right to conduct an investigation into work-related misconduct based upon the receipt of specific information about employee misconduct on an employee's personal account. The law also permits employers to review and rely upon any social media information found in the public domain. N.J.S.A. § 34:6B-6.



F. WORKER FREEDOM FROM EMPLOYER INTIMIDATION ACT

Employers may not require employees to attend an employer-sponsored meeting or participate in any communications with the employer, the purpose of which is to communicate the employer's opinion about religious or political matters. Employees may voluntarily attend employer-sponsored meetings and employers may provide other communications to the employees so long as the employer notifies the employees that they may refuse to attend the meetings or accept the communications without penalty. An employer may not take any adverse employment action against an employee who makes a good faith report of a violation or suspected violation of this law. N.J.S.A. §§ 34:19-9 et seq.

G. THE NEW JERSEY TRADE SECRETS ACT

The New Jersey Trade Secrets Act, N.J.S.A. § 56:15-1 et. seq. (NJTSA), prohibits the misappropriation of a company's trade secrets. Trade secrets include any formula, pattern, business data compilation, program, device, method, technique, design, diagram, drawing, invention, plan, procedure, prototype or process that (1) derives independent economic value from not being generally known to others who can obtain economic value from its disclosure or use, and (2) is subject to reasonable efforts to maintain its secrecy. Depending on the circumstances, remedies for a breach of the NJTSA include injunctive relief, monetary damages for losses caused, punitive damages (not to exceed two times actual losses) and attorneys' fees.

H. POST TERMINATION RESTRICTIVE COVENANT AGREEMENTS

While no New Jersey statute governs restrictive covenant agreements, such agreements (including non-competition and non-solicitation agreements), are enforceable under New Jersey common law. Specifically, restrictive covenant agreements will be enforced under New Jersey common law so long as they (1) protect the employer's legitimate business interests (including, for example, the employer's confidential business information and customer relationships), (2) do not impose an undue hardship on the employee, (3) are not injurious to the public interest, and (4) are temporally and geographically reasonable.

(Revised November 1, 2016)

