

Client Alert

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October 13, 2021

New Jersey Law Goes into Effect Protecting Older Employees from Forced Retirement, Failure to Hire/ Promote

On October 5, Governor Murphy signed a bill into law that amends New Jersey's anti-discrimination laws, increasing protections for older workers and expanding liability for violations of the law. The changes to the law include the following:

Forced Retirement of Public Employees

Except where otherwise statutorily required, public employers can no longer require their employees to retire upon reaching a certain age. Previously, state, county, and municipal employers could force retirement if "the retirement age [bore] a manifest relationship to the employment in question." Importantly, public employers still may force an employee's retirement when the employee is unable to adequately perform their duties. This change also applies to public colleges and universities, which previously were authorized to require their tenured employees to retire at age 70. It, however, does not include judges, who are constitutionally required to retire at

age 70. It also does not include law enforcement positions, which have a statutorily mandated retirement age.

Hiring and Promotion of Employees Over the Age of 70 – Applicable to Public and Private Employers

Public and private employers covered by the New Jersey Law Against Discrimination ("NJLAD") can no longer refuse to hire or promote persons older than 70 solely on the basis of age. The amendments, however, do not alter the bona fide occupational qualification exception to the general rule against age-based discrimination, which remains in effect.

Permitted Causes of Action and Damages

In addition to changing the substantive discrimination laws, the new amendments increase employer liability under the NJLAD. Now, an employee who is wrongfully forced to retire can sue in Superior



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of relief available under the NJLAD, including, as appropriate, front pay, emotional distress, attorney's fees, and/or punitive damages.

Prior to these amendments, in age discrimination cases based on forced retirement, an aggrieved employee's only recourse was to file a complaint with the Attorney General, and the only available remedy was reinstatement with backpay and interest.

For many employers, these amendments will have very little effect on their compliance efforts, as the federal Age Discrimination in Employment Act ("ADEA") already prohibits age-based forced retirement and refusing to hire or promote employees over the age of 40 based on age. These substantive changes, however, may significantly impact smaller businesses (those with fewer than 20 employees), who are not covered by the ADEA. These smaller businesses now risk liability for a wider range of age discrimination claims.

Moreover, all businesses should be aware of the more severe consequences that flow from violations of the NJLAD's prohibitions against age-based forced retirement. While employers previously only had to worry about reinstatement of an aggrieved employee, back pay, and interest, they now may be liable for more significant damages, including attorney's fees, punitive damages, and other relief under the NJLAD.

Consulting with experienced employment counsel about the impact of these changes will ensure compliance with the law and avoidance of increased liability under the NJLAD.