

February 24, 2023

2022 New Jersey Employment Law Recap and Looking Ahead in 2023

Over the past year, there have been several notable updates in New Jersey employment laws of which employers must be aware. Below are summaries of some of the significant changes to New Jersey's employment laws that occurred in 2022 and those on the horizon in 2023. *Changes That Occurred in 2022:*

New Posting and Distribution Requirements

As we previously discussed [here](#), the New Jersey Division on Civil Rights (NJDCR) adopted new and amended regulations designed to promote greater awareness of the New Jersey Law Against Discrimination (NJLAD) and the New Jersey Family Leave Act (NJFLA). Among other things, the NJDCR:

- updated the NJLAD and NJFLA posters (which can be found [here](#));
- clarified that employers may now satisfy the NJLAD and NJFLA posting requirements by displaying the notices on an Internet or intranet site rather than on a physical bulletin board if all employees have access to the site and are notified that the notices are displayed there; and
- added a requirement for employers to distribute the NJLAD and NJFLA notices to employees on an annual basis and upon request through e-mail or printed material (such as a paycheck insert, new-hire onboarding documents, an attachment to an employee handbook or a flyer distributed at an employee meeting).

Updates on New Jersey Cannabis Law

On September 9, 2022, the New Jersey Cannabis Regulatory Commission (the Commission) issued long-awaited guidance regarding when and how New Jersey employers may test employees for cannabis and potentially take adverse employment actions based on impairment due to cannabis use. In its new guidance, the Commission clarified that employers may not discipline employees based solely on a positive drug test. The guidance explains that, in addition to a positive test, employers must also be able to show a reasonable suspicion that the employee was impaired at work. Reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, body odors or speech of the employee during work hours. Accompanying the guidance is a "[Reasonable Suspicion Observed Behavior Report](#)" template created by the Commission that employers may use to make this determination. The template requires that at least one supervisor, but preferably two when possible, observe and document the grounds for the employer's reasonable suspicion that the employee is under the influence of cannabis.

Increase to New Jersey's Minimum Wage

On January 1, 2023, New Jersey's statewide minimum wage increased to \$14.13 per hour for most workers. This increase is part of legislation signed by Gov. Phil Murphy in February 2019 that will gradually raise the minimum wage to \$15 per hour by 2024 for most employees. The New Jersey Department of Labor and Workforce Development, which sets the minimum wage for the coming year, uses the rate specified in the law or a calculation based on the Consumer Price Index, whichever is

higher. This year, due to high inflation, the minimum wage increased to \$14.13 instead of \$14. Different rates and requirements apply to employers with fewer than six employees, employers in the agricultural industry, and employers with seasonal and tipped workers. Failure to comply with the New Jersey minimum wage law may subject employers to significant liability, including civil penalties and treble damages for unpaid wages.

Notice of Tracking Devices

As we previously discussed [here](#), a new law went into effect on April 18, 2022, that requires New Jersey employers to notify employees of devices used for the purpose of tracking the movement of a person, device or vehicle, regardless of whether the vehicle is owned by the company or the employee. The law defines "tracking device" as "an electronic or mechanical device which is designed or intended to be used for the sole purpose of tracking the movement of a vehicle, person, or device." However, the definition specifically excludes devices used for the purpose of documenting employee expense reimbursement. Employers that violate this law are subject to civil penalties of \$1,000 for the first violation and \$2,500 for each subsequent violation.

Gender-Neutral Bathrooms

A growing number of New Jersey towns have passed ordinances that require single-occupancy bathrooms in businesses and municipal buildings to be labeled gender-neutral. Recently, Montclair joined Hoboken, Princeton and Maplewood in passing this type of ordinance. *Significant Changes Already Happening in 2023:*

Amendments to the NJ WARN Act to Take Effect in April

As we previously discussed [here](#), the amendments to the New Jersey Worker Adjustment and Retraining Notification Act (NJ WARN Act) will take effect on April 10, 2023, after a nearly three-year reprieve due to the COVID-19 pandemic. The NJ WARN Act amendments are significant and, among other things, require New Jersey employers to provide mandatory severance pay to employees following a qualifying event, lower certain thresholds used to determine when a qualifying event has occurred, and increase the notice period from 60 days to 90 days. *What May Be on the Horizon for 2023:*

Efforts to Limit Employers' Use of Restrictive Covenants

The New Jersey Legislature has introduced several bills over the past few years seeking to curtail the use of restrictive covenants in the employment context. Most recently, in May 2022, the New Jersey General Assembly's Labor Committee voted in favor of Assembly Bill 3715. If enacted, the bill would impose some of the nation's most stringent procedural requirements on New Jersey employers seeking to restrict their employees' post-employment activities, limit the permissible scope and enforceability of certain restrictive covenants, and greatly increase the associated costs of enforcing restrictive covenants against former employees. For example, if passed, the bill would restrict the duration of restrictive covenants to 12 months post-termination, prohibit employers from requiring certain categories of workers to sign restrictive covenant agreements, and mandate an employer provide written notice to a departing employee of its intent to enforce the restrictive covenant agreement within 10 days of the employee's termination or risk voiding the agreement.

Takeaways

Employers must continually monitor the ever-changing landscape of New Jersey employment laws. With the arrival of the new year, employers in New Jersey should review their current policies and practices and seek counsel when needed to ensure they are in compliance.

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