

P.L. 2018, CHAPTER 9, *approved April 24, 2018*
Senate, No. 104 (*Second Reprint*)

1 AN ACT concerning equal pay ¹**[for women]**¹ and employment
2 discrimination, requiring public contractors to report certain
3 employment information, amending P.L.1945, c.169, and
4 supplementing P.L.1952, c.9 (C.34:11-56.1 et seq.).
5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:
8

9 ²1. (New section) This act shall be known and may be cited as
10 the “Diane B. Allen Equal Pay Act.”²
11

12 ²**[1.]** ²2.² Section 11 of P.L.1945, c.169 (C.10:5-12) is amended
13 to read as follows:

14 11. It shall be an unlawful employment practice, or, as the case
15 may be, an unlawful discrimination:

16 a. For an employer, because of the race, creed, color, national
17 origin, ancestry, age, marital status, civil union status, domestic
18 partnership status, affectional or sexual orientation, genetic
19 information, pregnancy or breastfeeding, sex, gender identity or
20 expression, disability or atypical hereditary cellular or blood trait of
21 any individual, or because of the liability for service in the Armed
22 Forces of the United States or the nationality of any individual, or
23 because of the refusal to submit to a genetic test or make available
24 the results of a genetic test to an employer, to refuse to hire or
25 employ or to bar or to discharge or require to retire, unless justified
26 by lawful considerations other than age, from employment such
27 individual or to discriminate against such individual in
28 compensation or in terms, conditions or privileges of employment;
29 provided, however, it shall not be an unlawful employment practice
30 to refuse to accept for employment an applicant who has received a
31 notice of induction or orders to report for active duty in the armed
32 forces; provided further that nothing herein contained shall be
33 construed to bar an employer from refusing to accept for
34 employment any person on the basis of sex in those certain
35 circumstances where sex is a bona fide occupational qualification,
36 reasonably necessary to the normal operation of the particular

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SLA committee amendments adopted March 5, 2018.

²Senate SBA committee amendments adopted March 13, 2018.

1 business or enterprise; provided further that nothing herein
2 contained shall be construed to bar an employer from refusing to
3 accept for employment or to promote any person over 70 years of
4 age; provided further that it shall not be an unlawful employment
5 practice for a club exclusively social or fraternal to use club
6 membership as a uniform qualification for employment, or for a
7 religious association or organization to utilize religious affiliation
8 as a uniform qualification in the employment of clergy, religious
9 teachers or other employees engaged in the religious activities of
10 the association or organization, or in following the tenets of its
11 religion in establishing and utilizing criteria for employment of an
12 employee; provided further, that it shall not be an unlawful
13 employment practice to require the retirement of any employee
14 who, for the two-year period immediately before retirement, is
15 employed in a bona fide executive or a high policy-making position,
16 if that employee is entitled to an immediate non-forfeitable annual
17 retirement benefit from a pension, profit sharing, savings or
18 deferred retirement plan, or any combination of those plans, of the
19 employer of that employee which equals in the aggregate at least
20 \$27,000.00; and provided further that an employer may restrict
21 employment to citizens of the United States where such restriction
22 is required by federal law or is otherwise necessary to protect the
23 national interest.

24 The provisions of subsections a. and b. of section 57 of
25 P.L.2003, c.246 (C.34:11A-20), and the provisions of section 58 of
26 P.L.2003, c.246 (C.26:8A-11), shall not be deemed to be an
27 unlawful discrimination under P.L.1945, c.169 (C.10:5-1 et seq.).

28 For the purposes of this subsection, a "bona fide executive" is a
29 top level employee who exercises substantial executive authority
30 over a significant number of employees and a large volume of
31 business. A "high policy-making position" is a position in which a
32 person plays a significant role in developing policy and in
33 recommending the implementation thereof.

34 For the purposes of this subsection, an unlawful employment
35 practice occurs, with respect to discrimination in compensation or
36 in the financial terms or conditions of employment, each occasion
37 that an individual is affected by application of a discriminatory
38 compensation decision or other practice, including, but not limited
39 to, each occasion that wages, benefits, or other compensation are
40 paid, resulting in whole or in part from the decision or other
41 practice.

42 In addition to any other relief authorized by the "Law Against
43 Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.) for
44 discrimination in compensation or in the financial terms or
45 conditions of employment, liability shall accrue and an aggrieved
46 person may obtain relief for back pay for the entire period of time ²,
47 except not more than six years, ² in which the violation with regard
48 to discrimination in compensation or in the financial terms or

1 conditions of employment has been continuous, if the violation
2 continues to occur within the statute of limitations.

3 Nothing in this subsection shall prohibit the application of the
4 doctrine of “continuing violation” or the “discovery rule” to any
5 appropriate claim as those doctrines currently exist in New Jersey
6 common law. It shall be an unlawful employment practice to
7 require employees or prospective employees to consent to a
8 shortened statute of limitations or to waive any of the protections
9 provided by the “Law Against Discrimination,” P.L.1945, c.169
10 (C.10:5-1 et seq.).

11 b. For a labor organization, because of the race, creed, color,
12 national origin, ancestry, age, marital status, civil union status,
13 domestic partnership status, affectional or sexual orientation,
14 gender identity or expression, disability, pregnancy or
15 breastfeeding, or sex of any individual, or because of the liability
16 for service in the Armed Forces of the United States or nationality
17 of any individual, to exclude or to expel from its membership such
18 individual or to discriminate in any way against any of its members,
19 against any applicant for, or individual included in, any apprentice
20 or other training program or against any employer or any individual
21 employed by an employer; provided, however, that nothing herein
22 contained shall be construed to bar a labor organization from
23 excluding from its apprentice or other training programs any person
24 on the basis of sex in those certain circumstances where sex is a
25 bona fide occupational qualification reasonably necessary to the
26 normal operation of the particular apprentice or other training
27 program.

28 c. For any employer or employment agency to print or circulate
29 or cause to be printed or circulated any statement, advertisement or
30 publication, or to use any form of application for employment, or to
31 make an inquiry in connection with prospective employment, which
32 expresses, directly or indirectly, any limitation, specification or
33 discrimination as to race, creed, color, national origin, ancestry,
34 age, marital status, civil union status, domestic partnership status,
35 affectional or sexual orientation, gender identity or expression,
36 disability, nationality, pregnancy or breastfeeding, or sex or liability
37 of any applicant for employment for service in the Armed Forces of
38 the United States, or any intent to make any such limitation,
39 specification or discrimination, unless based upon a bona fide
40 occupational qualification.

41 d. For any person to take reprisals against any person because
42 that person has opposed any practices or acts forbidden under this
43 act or because that person has sought legal advice regarding rights
44 under this act, shared relevant information with legal counsel,
45 shared information with a governmental entity, or filed a complaint,
46 testified or assisted in any proceeding under this act or to coerce,
47 intimidate, threaten or interfere with any person in the exercise or
48 enjoyment of, or on account of that person having aided or

1 encouraged any other person in the exercise or enjoyment of, any
2 right granted or protected by this act.

3 e. For any person, whether an employer or an employee or not,
4 to aid, abet, incite, compel or coerce the doing of any of the acts
5 forbidden under this act, or to attempt to do so.

6 f. (1) For any owner, lessee, proprietor, manager,
7 superintendent, agent, or employee of any place of public
8 accommodation directly or indirectly to refuse, withhold from or
9 deny to any person any of the accommodations, advantages,
10 facilities or privileges thereof, or to discriminate against any person
11 in the furnishing thereof, or directly or indirectly to publish,
12 circulate, issue, display, post or mail any written or printed
13 communication, notice, or advertisement to the effect that any of
14 the accommodations, advantages, facilities, or privileges of any
15 such place will be refused, withheld from, or denied to any person
16 on account of the race, creed, color, national origin, ancestry,
17 marital status, civil union status, domestic partnership status,
18 pregnancy or breastfeeding, sex, gender identity or expression,
19 affectional or sexual orientation, disability, liability for service in
20 the Armed Forces of the United States or nationality of such person,
21 or that the patronage or custom thereat of any person of any
22 particular race, creed, color, national origin, ancestry, marital status,
23 civil union status, domestic partnership status, pregnancy or
24 breastfeeding status, sex, gender identity or expression, affectional
25 or sexual orientation, disability, liability for service in the Armed
26 Forces of the United States or nationality is unwelcome,
27 objectionable or not acceptable, desired or solicited, and the
28 production of any such written or printed communication, notice or
29 advertisement, purporting to relate to any such place and to be made
30 by any owner, lessee, proprietor, superintendent or manager thereof,
31 shall be presumptive evidence in any action that the same was
32 authorized by such person; provided, however, that nothing
33 contained herein shall be construed to bar any place of public
34 accommodation which is in its nature reasonably restricted
35 exclusively to individuals of one sex, and which shall include but
36 not be limited to any summer camp, day camp, or resort camp,
37 bathhouse, dressing room, swimming pool, gymnasium, comfort
38 station, dispensary, clinic or hospital, or school or educational
39 institution which is restricted exclusively to individuals of one sex,
40 provided individuals shall be admitted based on their gender
41 identity or expression, from refusing, withholding from or denying
42 to any individual of the opposite sex any of the accommodations,
43 advantages, facilities or privileges thereof on the basis of sex;
44 provided further, that the foregoing limitation shall not apply to any
45 restaurant as defined in R.S.33:1-1 or place where alcoholic
46 beverages are served.

47 (2) Notwithstanding the definition of "a place of public
48 accommodation" as set forth in subsection 1. of section 5 of

1 P.L.1945, c.169 (C.10:5-5), for any owner, lessee, proprietor,
2 manager, superintendent, agent, or employee of any private club or
3 association to directly or indirectly refuse, withhold from or deny to
4 any individual who has been accepted as a club member and has
5 contracted for or is otherwise entitled to full club membership any
6 of the accommodations, advantages, facilities or privileges thereof,
7 or to discriminate against any member in the furnishing thereof on
8 account of the race, creed, color, national origin, ancestry, marital
9 status, civil union status, domestic partnership status, pregnancy or
10 breastfeeding, sex, gender identity, or expression, affectional or
11 sexual orientation, disability, liability for service in the Armed
12 Forces of the United States or nationality of such person.

13 In addition to the penalties otherwise provided for a violation of
14 P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2)
15 of subsection f. of this section is the holder of an alcoholic beverage
16 license issued under the provisions of R.S.33:1-12 for that private
17 club or association, the matter shall be referred to the Director of
18 the Division of Alcoholic Beverage Control who shall impose an
19 appropriate penalty in accordance with the procedures set forth in
20 R.S.33:1-31.

21 g. For any person, including but not limited to, any owner,
22 lessee, sublessee, assignee or managing agent of, or other person
23 having the right of ownership or possession of or the right to sell,
24 rent, lease, assign, or sublease any real property or part or portion
25 thereof, or any agent or employee of any of these:

26 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
27 to deny to or withhold from any person or group of persons any real
28 property or part or portion thereof because of race, creed, color,
29 national origin, ancestry, marital status, civil union status, domestic
30 partnership status, pregnancy or breastfeeding, sex, gender identity
31 or expression, affectional or sexual orientation, familial status,
32 disability, liability for service in the Armed Forces of the United
33 States, nationality, or source of lawful income used for rental or
34 mortgage payments;

35 (2) To discriminate against any person or group of persons
36 because of race, creed, color, national origin, ancestry, marital
37 status, civil union status, domestic partnership status, pregnancy or
38 breastfeeding, sex, gender identity or expression, affectional or
39 sexual orientation, familial status, disability, liability for service in
40 the Armed Forces of the United States, nationality or source of
41 lawful income used for rental or mortgage payments in the terms,
42 conditions or privileges of the sale, rental or lease of any real
43 property or part or portion thereof or in the furnishing of facilities
44 or services in connection therewith;

45 (3) To print, publish, circulate, issue, display, post or mail, or
46 cause to be printed, published, circulated, issued, displayed, posted
47 or mailed any statement, advertisement, publication or sign, or to
48 use any form of application for the purchase, rental, lease,

1 assignment or sublease of any real property or part or portion
2 thereof, or to make any record or inquiry in connection with the
3 prospective purchase, rental, lease, assignment, or sublease of any
4 real property, or part or portion thereof which expresses, directly or
5 indirectly, any limitation, specification or discrimination as to race,
6 creed, color, national origin, ancestry, marital status, civil union
7 status, domestic partnership status, pregnancy or breastfeeding, sex,
8 gender identity, or expression, affectional or sexual orientation,
9 familial status, disability, liability for service in the Armed Forces
10 of the United States, nationality, or source of lawful income used
11 for rental or mortgage payments, or any intent to make any such
12 limitation, specification or discrimination, and the production of
13 any such statement, advertisement, publicity, sign, form of
14 application, record, or inquiry purporting to be made by any such
15 person shall be presumptive evidence in any action that the same
16 was authorized by such person; provided, however, that nothing
17 contained in this subsection shall be construed to bar any person
18 from refusing to sell, rent, lease, assign or sublease or from
19 advertising or recording a qualification as to sex for any room,
20 apartment, flat in a dwelling or residential facility which is planned
21 exclusively for and occupied by individuals of one sex to any
22 individual of the exclusively opposite sex on the basis of sex
23 provided individuals shall be qualified based on their gender
24 identity or expression;

25 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise
26 to deny to or withhold from any person or group of persons any real
27 property or part or portion thereof because of the source of any
28 lawful income received by the person or the source of any lawful
29 rent payment to be paid for the real property; or

30 (5) To refuse to rent or lease any real property to another person
31 because that person's family includes children under 18 years of
32 age, or to make an agreement, rental or lease of any real property
33 which provides that the agreement, rental or lease shall be rendered
34 null and void upon the birth of a child. This paragraph shall not
35 apply to housing for older persons as defined in subsection mm. of
36 section 5 of P.L.1945, c.169 (C.10:5-5).

37 h. For any person, including but not limited to, any real estate
38 broker, real estate salesperson, or employee or agent thereof:

39 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
40 sale, rental, lease, assignment, or sublease any real property or part
41 or portion thereof to any person or group of persons or to refuse to
42 negotiate for the sale, rental, lease, assignment, or sublease of any
43 real property or part or portion thereof to any person or group of
44 persons because of race, creed, color, national origin, ancestry,
45 marital status, civil union status, domestic partnership status,
46 familial status, pregnancy or breastfeeding, sex, gender identity or
47 expression, affectional or sexual orientation, liability for service in
48 the Armed Forces of the United States, disability, nationality, or

1 source of lawful income used for rental or mortgage payments, or to
2 represent that any real property or portion thereof is not available
3 for inspection, sale, rental, lease, assignment, or sublease when in
4 fact it is so available, or otherwise to deny or withhold any real
5 property or any part or portion of facilities thereof to or from any
6 person or group of persons because of race, creed, color, national
7 origin, ancestry, marital status, civil union status, domestic
8 partnership status, familial status, pregnancy or breastfeeding, sex,
9 gender identity or expression, affectional or sexual orientation,
10 liability for service in the Armed Forces of the United States,
11 disability or nationality;

12 (2) To discriminate against any person because of race, creed,
13 color, national origin, ancestry, marital status, civil union status,
14 domestic partnership status, familial status, pregnancy or
15 breastfeeding, sex, gender identity or expression, affectional or
16 sexual orientation, disability, nationality, or source of lawful
17 income used for rental or mortgage payments in the terms,
18 conditions or privileges of the sale, rental, lease, assignment or
19 sublease of any real property or part or portion thereof or in the
20 furnishing of facilities or services in connection therewith;

21 (3) To print, publish, circulate, issue, display, post, or mail, or
22 cause to be printed, published, circulated, issued, displayed, posted
23 or mailed any statement, advertisement, publication or sign, or to
24 use any form of application for the purchase, rental, lease,
25 assignment, or sublease of any real property or part or portion
26 thereof or to make any record or inquiry in connection with the
27 prospective purchase, rental, lease, assignment, or sublease of any
28 real property or part or portion thereof which expresses, directly or
29 indirectly, any limitation, specification or discrimination as to race,
30 creed, color, national origin, ancestry, marital status, civil union
31 status, domestic partnership status, familial status, pregnancy or
32 breastfeeding, sex, gender identity or expression, affectional or
33 sexual orientation, disability, liability for service in the Armed
34 Forces of the United States, nationality, or source of lawful income
35 used for rental or mortgage payments or any intent to make any
36 such limitation, specification or discrimination, and the production
37 of any such statement, advertisement, publicity, sign, form of
38 application, record, or inquiry purporting to be made by any such
39 person shall be presumptive evidence in any action that the same
40 was authorized by such person; provided, however, that nothing
41 contained in this subsection h., shall be construed to bar any person
42 from refusing to sell, rent, lease, assign or sublease or from
43 advertising or recording a qualification as to sex for any room,
44 apartment, flat in a dwelling or residential facility which is planned
45 exclusively for and occupied exclusively by individuals of one sex
46 to any individual of the opposite sex on the basis of sex, provided
47 individuals shall be qualified based on their gender identity or
48 expression;

1 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise
2 to deny to or withhold from any person or group of persons any real
3 property or part or portion thereof because of the source of any
4 lawful income received by the person or the source of any lawful
5 rent payment to be paid for the real property; or

6 (5) To refuse to rent or lease any real property to another person
7 because that person's family includes children under 18 years of
8 age, or to make an agreement, rental or lease of any real property
9 which provides that the agreement, rental or lease shall be rendered
10 null and void upon the birth of a child. This paragraph shall not
11 apply to housing for older persons as defined in subsection mm. of
12 section 5 of P.L.1945, c.169 (C.10:5-5).

13 i. For any person, bank, banking organization, mortgage
14 company, insurance company or other financial institution, lender
15 or credit institution involved in the making or purchasing of any
16 loan or extension of credit, for whatever purpose, whether secured
17 by residential real estate or not, including but not limited to
18 financial assistance for the purchase, acquisition, construction,
19 rehabilitation, repair or maintenance of any real property or part or
20 portion thereof or any agent or employee thereof:

21 (1) To discriminate against any person or group of persons
22 because of race, creed, color, national origin, ancestry, marital
23 status, civil union status, domestic partnership status, pregnancy or
24 breastfeeding, sex, gender identity or expression, affectional or
25 sexual orientation, disability, liability for service in the Armed
26 Forces of the United States, familial status or nationality, in the
27 granting, withholding, extending, modifying, renewing, or
28 purchasing, or in the fixing of the rates, terms, conditions or
29 provisions of any such loan, extension of credit or financial
30 assistance or purchase thereof or in the extension of services in
31 connection therewith;

32 (2) To use any form of application for such loan, extension of
33 credit or financial assistance or to make record or inquiry in
34 connection with applications for any such loan, extension of credit
35 or financial assistance which expresses, directly or indirectly, any
36 limitation, specification or discrimination as to race, creed, color,
37 national origin, ancestry, marital status, civil union status, domestic
38 partnership status, pregnancy or breastfeeding, sex, gender identity
39 or expression, affectional or sexual orientation, disability, liability
40 for service in the Armed Forces of the United States, familial status
41 or nationality or any intent to make any such limitation,
42 specification or discrimination; unless otherwise required by law or
43 regulation to retain or use such information;

44 (3) (Deleted by amendment, P.L.2003, c.180).

45 (4) To discriminate against any person or group of persons
46 because of the source of any lawful income received by the person
47 or the source of any lawful rent payment to be paid for the real
48 property; or

1 (5) To discriminate against any person or group of persons
2 because that person's family includes children under 18 years of
3 age, or to make an agreement or mortgage which provides that the
4 agreement or mortgage shall be rendered null and void upon the
5 birth of a child. This paragraph shall not apply to housing for older
6 persons as defined in subsection mm. of section 5 of P.L.1945,
7 c.169 (C.10:5-5).

8 j. For any person whose activities are included within the
9 scope of this act to refuse to post or display such notices concerning
10 the rights or responsibilities of persons affected by this act as the
11 Attorney General may by regulation require.

12 k. For any real estate broker, real estate salesperson or
13 employee or agent thereof or any other individual, corporation,
14 partnership, or organization, for the purpose of inducing a
15 transaction for the sale or rental of real property from which
16 transaction such person or any of its members may benefit
17 financially, to represent that a change has occurred or will or may
18 occur in the composition with respect to race, creed, color, national
19 origin, ancestry, marital status, civil union status, domestic
20 partnership status, familial status, pregnancy or breastfeeding, sex,
21 gender identity or expression, affectional or sexual orientation,
22 disability, liability for service in the Armed Forces of the United
23 States, nationality, or source of lawful income used for rental or
24 mortgage payments of the owners or occupants in the block,
25 neighborhood or area in which the real property is located, and to
26 represent, directly or indirectly, that this change will or may result
27 in undesirable consequences in the block, neighborhood or area in
28 which the real property is located, including, but not limited to the
29 lowering of property values, an increase in criminal or anti-social
30 behavior, or a decline in the quality of schools or other facilities.

31 l. For any person to refuse to buy from, sell to, lease from or
32 to, license, contract with, or trade with, provide goods, services or
33 information to, or otherwise do business with any other person on
34 the basis of the race, creed, color, national origin, ancestry, age,
35 pregnancy or breastfeeding, sex, gender identity or expression,
36 affectional or sexual orientation, marital status, civil union status,
37 domestic partnership status, liability for service in the Armed
38 Forces of the United States, disability, nationality, or source of
39 lawful income used for rental or mortgage payments of such other
40 person or of such other person's spouse, partners, members,
41 stockholders, directors, officers, managers, superintendents, agents,
42 employees, business associates, suppliers, or customers. This
43 subsection shall not prohibit refusals or other actions (1) pertaining
44 to employee-employer collective bargaining, labor disputes, or
45 unfair labor practices, or (2) made or taken in connection with a
46 protest of unlawful discrimination or unlawful employment
47 practices.

48 m. For any person to:

1 (1) Grant or accept any letter of credit or other document which
2 evidences the transfer of funds or credit, or enter into any contract
3 for the exchange of goods or services, where the letter of credit,
4 contract, or other document contains any provisions requiring any
5 person to discriminate against or to certify that he, she or it has not
6 dealt with any other person on the basis of the race, creed, color,
7 national origin, ancestry, age, pregnancy or breastfeeding, sex,
8 gender identity or expression, affectional or sexual orientation,
9 marital status, civil union status, domestic partnership status,
10 disability, liability for service in the Armed Forces of the United
11 States, or nationality of such other person or of such other person's
12 spouse, partners, members, stockholders, directors, officers,
13 managers, superintendents, agents, employees, business associates,
14 suppliers, or customers.

15 (2) Refuse to grant or accept any letter of credit or other
16 document which evidences the transfer of funds or credit, or refuse
17 to enter into any contract for the exchange of goods or services, on
18 the ground that it does not contain such a discriminatory provision
19 or certification.

20 The provisions of this subsection shall not apply to any letter of
21 credit, contract, or other document which contains any provision
22 pertaining to employee-employer collective bargaining, a labor
23 dispute or an unfair labor practice, or made in connection with the
24 protest of unlawful discrimination or an unlawful employment
25 practice, if the other provisions of such letter of credit, contract, or
26 other document do not otherwise violate the provisions of this
27 subsection.

28 n. For any person to aid, abet, incite, compel, coerce, or induce
29 the doing of any act forbidden by subsections l. and m. of section
30 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
31 do so. Such prohibited conduct shall include, but not be limited to:

32 (1) Buying from, selling to, leasing from or to, licensing,
33 contracting with, trading with, providing goods, services, or
34 information to, or otherwise doing business with any person
35 because that person does, or agrees or attempts to do, any such act
36 or any act prohibited by this subsection; or

37 (2) Boycotting, commercially blacklisting or refusing to buy
38 from, sell to, lease from or to, license, contract with, provide goods,
39 services or information to, or otherwise do business with any person
40 because that person has not done or refuses to do any such act or
41 any act prohibited by this subsection; provided that this subsection
42 shall not prohibit refusals or other actions either pertaining to
43 employee-employer collective bargaining, labor disputes, or unfair
44 labor practices, or made or taken in connection with a protest of
45 unlawful discrimination or unlawful employment practices.

46 o. For any multiple listing service, real estate brokers'
47 organization or other service, organization or facility related to the
48 business of selling or renting dwellings to deny any person access

1 to or membership or participation in such organization, or to
2 discriminate against such person in the terms or conditions of such
3 access, membership, or participation, on account of race, creed,
4 color, national origin, ancestry, age, marital status, civil union
5 status, domestic partnership status, familial status, pregnancy or
6 breastfeeding, sex, gender identity or expression, affectional or
7 sexual orientation, disability, liability for service in the Armed
8 Forces of the United States or nationality.

9 p. Nothing in the provisions of this section shall affect the
10 ability of an employer to require employees to adhere to reasonable
11 workplace appearance, grooming and dress standards not precluded
12 by other provisions of State or federal law, except that an employer
13 shall allow an employee to appear, groom and dress consistent with
14 the employee's gender identity or expression.

15 q. (1) For any employer to impose upon a person as a condition
16 of obtaining or retaining employment, including opportunities for
17 promotion, advancement or transfers, any terms or conditions that
18 would require a person to violate or forego a sincerely held
19 religious practice or religious observance, including but not limited
20 to the observance of any particular day or days or any portion
21 thereof as a Sabbath or other holy day in accordance with the
22 requirements of the religion or religious belief, unless, after
23 engaging in a bona fide effort, the employer demonstrates that it is
24 unable to reasonably accommodate the employee's religious
25 observance or practice without undue hardship on the conduct of the
26 employer's business. Notwithstanding any other provision of law to
27 the contrary, an employee shall not be entitled to premium wages or
28 premium benefits for work performed during hours to which those
29 premium wages or premium benefits would ordinarily be
30 applicable, if the employee is working during those hours only as an
31 accommodation to his religious requirements. Nothing in this
32 subsection q. shall be construed as reducing:

33 (a) The number of the hours worked by the employee which are
34 counted towards the accruing of seniority, pension or other benefits;
35 or

36 (b) Any premium wages or benefits provided to an employee
37 pursuant to a collective bargaining agreement.

38 (2) For an employer to refuse to permit an employee to utilize
39 leave, as provided for in this subsection q., which is solely used to
40 accommodate the employee's sincerely held religious observance or
41 practice. Except where it would cause an employer to incur an
42 undue hardship, no person shall be required to remain at his place
43 of employment during any day or days or portion thereof that, as a
44 requirement of his religion, he observes as his Sabbath or other holy
45 day, including a reasonable time prior and subsequent thereto for
46 travel between his place of employment and his home; provided that
47 any such absence from work shall, wherever practicable in the
48 reasonable judgment of the employer, be made up by an equivalent

1 amount of time and work at some other mutually convenient time,
2 or shall be charged against any leave with pay ordinarily granted,
3 other than sick leave, and any such absence not so made up or
4 charged, may be treated by the employer of that person as leave
5 taken without pay.

6 (3) (a) For purposes of this subsection q., "undue hardship"
7 means an accommodation requiring unreasonable expense or
8 difficulty, unreasonable interference with the safe or efficient
9 operation of the workplace or a violation of a bona fide seniority
10 system or a violation of any provision of a bona fide collective
11 bargaining agreement.

12 (b) In determining whether the accommodation constitutes an
13 undue hardship, the factors considered shall include:

14 (i) The identifiable cost of the accommodation, including the
15 costs of loss of productivity and of retaining or hiring employees or
16 transferring employees from one facility to another, in relation to
17 the size and operating cost of the employer.

18 (ii) The number of individuals who will need the particular
19 accommodation for a sincerely held religious observance or
20 practice.

21 (iii) For an employer with multiple facilities, the degree to
22 which the geographic separateness or administrative or fiscal
23 relationship of the facilities will make the accommodation more
24 difficult or expensive.

25 (c) An accommodation shall be considered to constitute an
26 undue hardship if it will result in the inability of an employee to
27 perform the essential functions of the position in which he or she is
28 employed.

29 (d) (i) The provisions of this subsection q. shall be applicable
30 only to reasonable accommodations of religious observances and
31 shall not supersede any definition of undue hardship or standards
32 for reasonable accommodation of the disabilities of employees.

33 (ii) This subsection q. shall not apply where the uniform
34 application of terms and conditions of attendance to employees is
35 essential to prevent undue hardship to the employer. The burden of
36 proof regarding the applicability of this subparagraph (d) shall be
37 upon the employer.

38 r. For any employer to take reprisals against any employee for
39 requesting from ¹, discussing with¹, or disclosing to, any other
40 employee or former employee of the employer, a lawyer from
41 whom the employee seeks legal advice, or any government agency
42 information regarding the job title, occupational category, and rate
43 of compensation, including benefits, of the employee or any other
44 employee or former employee of the employer, or the gender, race,
45 ethnicity, military status, or national origin of the employee or any
46 other employee or former employee of the employer, regardless of
47 whether the request was responded to ¹], if the purpose of the
48 request for the information was to assist in investigating the

1 possibility of the occurrence of, or in taking of legal action
2 regarding, potential discriminatory treatment concerning pay,
3 compensation, bonuses, other compensation, or benefits¹, or to
4 require, as a condition of employment, any employee or prospective
5 employee to sign a waiver, or to otherwise require an employee or
6 prospective employee to agree, not to make those requests or
7 disclosures. Nothing in this subsection shall be construed to require
8 an employee to disclose such information about the employee
9 herself to any other employee or former employee of the employer
10 or to any authorized representative of the other employee or former
11 employee.

12 s. For an employer to treat, for employment-related purposes, a
13 woman employee that the employer knows, or should know, is
14 affected by pregnancy or breastfeeding in a manner less favorable
15 than the treatment of other persons not affected by pregnancy or
16 breastfeeding but similar in their ability or inability to work. In
17 addition, an employer of an employee who is a woman affected by
18 pregnancy shall make available to the employee reasonable
19 accommodation in the workplace, such as bathroom breaks, breaks
20 for increased water intake, periodic rest, assistance with manual
21 labor, job restructuring or modified work schedules, and temporary
22 transfers to less strenuous or hazardous work, for needs related to
23 the pregnancy when the employee, based on the advice of her
24 physician, requests the accommodation, and, in the case of a
25 employee breast feeding her infant child, the accommodation shall
26 include reasonable break time each day to the employee and a
27 suitable room or other location with privacy, other than a toilet stall,
28 in close proximity to the work area for the employee to express
29 breast milk for the child, unless the employer can demonstrate that
30 providing the accommodation would be an undue hardship on the
31 business operations of the employer. The employer shall not in any
32 way penalize the employee in terms, conditions or privileges of
33 employment for requesting or using the accommodation. Workplace
34 accommodation provided pursuant to this subsection and paid or
35 unpaid leave provided to an employee affected by pregnancy or
36 breastfeeding shall not be provided in a manner less favorable than
37 accommodations or leave provided to other employees not affected
38 by pregnancy or breastfeeding but similar in their ability or inability
39 to work. This subsection shall not be construed as otherwise
40 increasing or decreasing any employee's rights under law to paid or
41 unpaid leave in connection with pregnancy or breastfeeding.

42 For the purposes of this section "pregnancy or breastfeeding"
43 means pregnancy, childbirth, and breast feeding or expressing milk
44 for breastfeeding, or medical conditions related to pregnancy,
45 childbirth, or breastfeeding, including recovery from childbirth.

46 For the purposes of this subsection, in determining whether an
47 accommodation would impose undue hardship on the operation of
48 an employer's business, the factors to be considered include: the

1 overall size of the employer's business with respect to the number
2 of employees, number and type of facilities, and size of budget; the
3 type of the employer's operations, including the composition and
4 structure of the employer's workforce; the nature and cost of the
5 accommodation needed, taking into consideration the availability of
6 tax credits, tax deductions, and outside funding; and the extent to
7 which the accommodation would involve waiver of an essential
8 requirement of a job as opposed to a tangential or non-business
9 necessity requirement.

10 t. For an employer to pay any of its employees ¹who is a
11 member of a protected class¹ at a rate of compensation, including
12 benefits, which is less than the rate paid by the employer to
13 employees ¹[of the other sex] who are not members of the
14 protected class¹ for substantially similar work, when viewed as a
15 composite of skill, effort and responsibility. An employer who is
16 paying a rate of compensation in violation of this subsection shall
17 not reduce the rate of compensation of any employee in order to
18 comply with this subsection. An employer may pay a different rate
19 of compensation only if the employer demonstrates that the
20 differential is made pursuant to a seniority system, a merit system,
21 or the employer demonstrates:

22 (1) That the differential is based on one or more legitimate, bona
23 fide factors other than ¹[sex] the characteristics of members of the
24 protected class¹, such as training, education or experience, or the
25 quantity or quality of production;

26 (2) That the factor or factors ¹are not based on, and¹ do not
27 perpetuate¹, ¹ a ¹[sex-based]¹ differential in compensation ¹based
28 on sex or any other characteristic of members of a protected class¹;

29 (3) That each of the factors is applied reasonably;

30 (4) That one or more of the factors account for the entire wage
31 differential; and

32 (5) That the factors are job-related with respect to the position
33 in question and based on a legitimate business necessity. A factor
34 based on business necessity shall not apply if it is demonstrated that
35 there are alternative business practices that would serve the same
36 business purpose without producing the wage differential.

37 Comparisons of wage rates shall be based on wage rates in all of
38 an employer's operations or facilities. ¹For the purposes of this
39 subsection, "member of a protected class" means an employee who
40 has one or more characteristics, including race, creed, color,
41 national origin, nationality, ancestry, age, marital status, civil union
42 status, domestic partnership status, affectional or sexual orientation,
43 genetic information, pregnancy, sex, gender identity or expression,
44 disability or atypical hereditary cellular or blood trait of any
45 individual, or liability for service in the armed forces, for which
46 subsection a. of this section prohibits an employer from refusing to
47 hire or employ or barring or discharging or requiring to retire from

1 employment or discriminating against the individual in
2 compensation or in terms, conditions or privileges of employment.¹
3 (cf: P.L.2017, c.263, s.1).
4

5 ²3. Section 12 of P.L.1945, c.169 (C.10:5-13) is amended to
6 read as follows:

7 12. Any person claiming to be aggrieved by an unlawful
8 employment practice or an unlawful discrimination may, personally
9 or by an attorney-at-law, make, sign and file with the division a
10 verified complaint in writing which shall state the name and address
11 of the person, employer, labor organization, employment agency,
12 owner, lessee, proprietor, manager, superintendent, or agent alleged
13 to have committed the unlawful employment practice or unlawful
14 discrimination complained of and which shall set forth the
15 particulars thereof and shall contain such other information as may
16 be required by the division. Upon receipt of the complaint, the
17 division shall notify the complainant on a form promulgated by the
18 director of the division and approved by the Attorney General of the
19 complainant's rights under this act, including the right to file a
20 complaint in the Superior Court to be heard before a jury; of the
21 jurisdictional limitations of the division; and any other provisions of
22 this act, without interpretation, that may apply to the complaint. The
23 Commissioner of Labor and Workforce Development, the Attorney
24 General, or the Commissioner of Education may, in like manner,
25 make, sign and file such complaint. Any employer whose
26 employees, or some of them, refuse or threaten to refuse to co-
27 operate with the provisions of this act, may file with the division a
28 verified complaint asking for assistance by conciliation or other
29 remedial action.

30 Any complainant may initiate suit in Superior Court under this
31 act without first filing a complaint with the division or any
32 municipal office. Upon the application of any party, a jury trial
33 shall be directed to try the validity of any claim under this act
34 specified in the suit. All remedies available in common law tort
35 actions shall be available to prevailing plaintiffs. These remedies
36 are in addition to any provided by this act or any other statute.
37 Prosecution of such suit in Superior Court under this act shall bar
38 the filing of a complaint with the division or any municipal office
39 during the pendency of any such suit. If a jury determines that an
40 employer is guilty of an unlawful employment practice prohibited
41 by subsection r. or t. of section 11 of P.L.1945, c.169 (C.10:5-12),
42 the judge shall award three times any monetary damages to the
43 person or persons aggrieved by the violation.

44 At any time after 180 days from the filing of a complaint with
45 the division, a complainant may file a request with the division to
46 present the action personally or through counsel to the Office of
47 Administrative Law. Upon such request, the director of the division
48 shall file the action with the Office of Administrative Law,

1 provided that no action may be filed with the Office of
2 Administrative Law where the director of the division has found
3 that no probable cause exists to credit the allegations of the
4 complaint or has otherwise dismissed the complaint.

5 A party to an action based upon a violation of this act shall mail
6 a copy of the initial pleadings or claims, amended pleadings or
7 claims, counterclaims, briefs, and legal memoranda to the division
8 at the same time as filing such documents with the Office of
9 Administrative Law or the court. Upon application to the Office of
10 Administrative Law or to the court wherein the matter is pending,
11 the division shall be permitted to intervene.²

12 (cf: P.L.1990, c.12, s.2)

13
14 ²[2.] 4.² Section 16 of P.L.1945, c.169 (C.10:5-17) is
15 amended to read as follows:

16 16. If, upon all evidence at the hearing, the director shall find
17 that the respondent has engaged in any unlawful employment
18 practice or unlawful discrimination as defined in this act, the
19 director shall state his findings of fact and conclusions of law and
20 shall issue and cause to be served on such respondent an order
21 requiring such respondent to cease and desist from such unlawful
22 employment practice or unlawful discrimination and to take such
23 affirmative action, including, but not limited to, hiring,
24 reinstatement or upgrading of employees, with or without back pay,
25 or restoration to membership, in any respondent labor organization,
26 or extending full and equal accommodations, advantages, facilities,
27 and privileges to all persons, as, in the judgment of the director, will
28 effectuate the purpose of this act, and including a requirement for
29 report of the manner of compliance. If the conduct violative of this
30 act constitutes any form of unlawful economic discrimination
31 prohibited in **[section 11, subsections]** subsection 1., m., [and] or
32 n. of [this act,] section 11 of P.L.1945, c.169 (C.10:5-12), or any
33 form of unlawful employment practice prohibited by subsection r.
34 or t. of section 11 of P.L.1945, c.169 (C.10:5-12), the affirmative
35 action taken by the director may include the award of three-fold
36 damages to the person or persons aggrieved by the violation. The
37 director shall have the power to use reasonably certain bases,
38 including but not limited to list, catalogue or market prices or
39 values, or contract or advertised terms and conditions, in order to
40 determine particulars or performance in giving appropriate remedy.
41 In addition to any other remedies provided by P.L.1945,
42 c.169 (C.10:5-1 et seq.), a prevailing complainant may recover
43 damages to compensate for emotional distress caused by the
44 activities found to be in violation of P.L.1945, c.169 (C.10:5-1 et
45 seq.) to the same extent as is available in common law tort actions.
46 In any case in which the director, Attorney General, or appropriate
47 organization is a complainant, on behalf of named or unnamed
48 individuals or a class of individuals, any of the remedies or relief

1 allowed by this act may be awarded or applied to the named or
2 unnamed individual victims of discrimination. If, upon all
3 evidence, the director shall find that the respondent has not engaged
4 in any such unlawful practice or unlawful discrimination, the
5 director shall state his findings of fact and conclusions of law and
6 shall issue and cause to be served on the complainant an order
7 dismissing the said complaint as to such respondent.

8 (cf: P.L.2003, c.180, s.16)

9
10 ²[3.] 5.² (New section) a. Any employer, regardless of the
11 location of the employer, who enters into a contract with a public
12 body to provide qualifying services to the public body shall provide
13 a report to the Commissioner of Labor and Workforce
14 Development, in a form issued by regulation promulgated by the
15 commissioner, of information regarding the ²compensation and
16 hours worked by employees categorized by² gender, race, ²[job
17 title] ethnicity², ²[occupational] and job² category ²[, and total
18 compensation of every employee of the employer employed in the
19 State in connection with the contract]². ²[The employer shall
20 provide the commissioner, throughout the duration of the contract
21 or contracts, with an update to the report each time there is a
22 significant change in any of the information that the employer is
23 required to report pursuant to this section, or other significant
24 change in employment status, including, but not limited to, medical
25 leave of 12 weeks or more, hiring, termination for any reason, a
26 change in part-time or full-time status, or a change in “employee”
27 or “contractor” status] Data regarding compensation and hours
28 worked by employees shall be reported in the form by pay bands to
29 be established by regulation promulgated by the commissioner. The
30 commissioner may establish a standard presumption for the number
31 of hours worked by a fulltime employee or by a part-time employee
32 for whom an employer does not track actual hours worked. An
33 employer shall provide a report for each establishment of the
34 employer².

35 b. Any employer, regardless of the location of the employer,
36 who enters into a contract with a public body to perform any public
37 work for the public body shall provide to the commissioner, through
38 certified payroll records required pursuant to P.L.1963, c.150
39 (C.34:11-56.25 et seq.), information regarding the gender, race, job
40 title, occupational category, and rate of total compensation of every
41 employee of the employer employed in the State in connection with
42 the contract. The employer shall provide the commissioner,
43 throughout the duration of the contract or contracts, with an update
44 to the information whenever payroll records are required to be
45 submitted pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.).

46 c. The commissioner shall retain the information provided by
47 the employer during any period of time that one or more contracts

1 are in effect between the employer and any public body and not less
2 than five years after the end of that period. The retained
3 employment information shall be made available by the
4 commissioner to the Division on Civil Rights in the Department of
5 Law and Public Safety, and, upon request, provided to anyone who
6 is or was an employee of the employer during the period of any of
7 the contracts between the employer and any public body, or any
8 authorized representative of the employee.

9 d. For the purposes of the section:

10 “Public body” means the State or any agency or instrumentality
11 of the State;

12 “Public work” means public work as defined in section 2 of
13 P.L.1963, c.150 (C.34:11-56.26) and which is subject to the
14 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.). Public work
15 shall not include the provision of goods or products.

16 “Qualifying services” means the provision of any service to the
17 State or to any other public body, except for public work as defined
18 in section 2 of P.L.1963, c.150 (C.34:11-56.26).

19 “Service” means any act performed in exchange for payment,
20 including the provision of professional services, but shall not
21 include the sale of goods or products.

22

23 ²[4.] 6.² This act shall take effect ²[immediately] on July 1,
24 2018².

25

26

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28

29 _____
“Diane B. Allen Equal Pay Act.”