

ASSEMBLY, No. 4637

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED SEPTEMBER 14, 2020

Sponsored by:

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

SYNOPSIS

Concerns unlawful discrimination and harassment.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning unlawful discrimination and harassment and
2 supplementing and amending P.L.1945, c.169 and amending
3 P.L.2019, c.39.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) Legislative findings and declarations
9 concerning unlawful harassment.

10 The Legislature finds and declares:

11 a. The purpose of this section is to affirm that the right to be
12 free from discrimination in employment, housing, business
13 relationships, and places of public accommodation includes the
14 right to be free from unlawful harassment based on any
15 characteristic protected by the “Law Against Discrimination.”

16 b. Among the goals of this act is to codify the standard for
17 hostile environment harassment claims set forth in Lehmann v.
18 Toys R Us, Inc., 132 N.J. 587 (1993); Taylor v. Metzger, 152 N.J.
19 490 (1998); L.W. v. Toms River Regional Schools Board of
20 Education, 189 N.J. 381 (2007); and Justice Ginsburg’s concurrence
21 in Harris v. Forklift Systems, 510 U.S. 17, 26 (1993) (Ginsburg, J.,
22 concurring).

23 c. It is the further intent of the Legislature to disavow
24 interpretations of the standard for hostile environment harassment
25 claims under the “Law Against Discrimination” found in decisions
26 such as Clayton v. City of Atlantic City, 538 Fed. Appx. 124, 129
27 (3d Cir. 2013), in which the court held that an incident in which a
28 supervisor intentionally grabbed an employee’s buttocks did not
29 rise to the level of severe or pervasive conduct; Godfrey v.
30 Princeton Theological Seminary, 196 N.J. 178, 198 (2008), in
31 which the court held that incidents must be described “in sterile
32 terms, stripped of the overlay of (the plaintiffs’) subjective
33 reactions to these interactions,” because, in the court’s view, those
34 reactions were not relevant to “the determination of whether the
35 conduct is severe or pervasive,” and held that the alleged harasser’s
36 “repeated and unwelcome behavior was one of the socially
37 uncomfortable situations that many women encounter in the course
38 of their lives when someone in whom they are not interested
39 persists in trying to persuade them otherwise.”; id. at 201 (harassing
40 conduct not directed at or witnessed by plaintiff cannot factor into
41 analysis of a hostile work environment claim); and Anastasia v.
42 Cushman Wakefield, 455 Fed. Appx. 236, 237-240 (3d Cir. 2011),
43 where the court found that no reasonable jury could find severe or
44 pervasive harassment where: the plaintiff’s superior informed her
45 that “he was romantically attracted to her and had been for years,”

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.

1 and then, over that day and the following day, followed her to the
2 parking lot and gently grabbed her arm, asked her for a photograph
3 of her and her new boyfriend, and “concocted a pretext to have (the
4 plaintiff) meet him alone in a break room”; the plaintiff
5 immediately took a temporary leave of absence, while her superior
6 continued to call and send emails and text messages to her, despite
7 her repeated statements that his further contact was unwanted; and
8 the plaintiff refused to return to work when her employer refused to
9 create an arrangement under which she would not ultimately have to
10 report to the alleged harasser, and her employer terminated her
11 while she was out on leave, but treated the action as a voluntary
12 resignation.

13 d. It is not the intent of the Legislature, by enacting this law, to
14 disavow, repudiate or supplant any other established doctrines
15 regarding sexual harassment or unlawful harassment, including: (1)
16 quid pro quo sexual harassment, which exists separately from
17 hostile environment sexual harassment; or (2) business relationship
18 liability, consistent with subsection 1. of section 11 of
19 P.L.1945, c.169 (C.10:5-12) and J.T.’s Tire Service, Inc. v. United
20 Rentals North America, Inc., 411 N.J. Super. 236 (App. Div. 2010).

21

22 2. (New section) Unlawful harassment; standard;
23 interpretation.

24 a. It shall be unlawful discrimination in violation of
25 P.L.1945, c.169 (C.10:5-1 et seq.) for a person or entity to subject
26 an individual, because of sex or any other characteristic of the
27 individual protected under section 11 of P.L.1945, c.169 (C.10:5-
28 12), to unlawful harassment.

29 b. In order to state a claim for unlawful harassment based on a
30 hostile work environment under P.L.1945, c.169 (C.10:5-1 et seq.),
31 a complainant shall show conduct that occurred because of sex or
32 any other characteristic of the individual protected under section 11
33 of P.L.1945, c.169 (C.10:5-12), which a reasonable person in the
34 complainant’s protected class would find to be sufficiently severe
35 or pervasive so as to alter the conditions of employment and create
36 an intimidating, hostile, or offensive work environment. When a
37 violation of this subsection occurs in a workplace, it shall also be an
38 unlawful employment practice.

39 (1) The following standards shall guide the determination of
40 whether a violation of this subsection has occurred:

41 (a) A determination of whether the harassing conduct was
42 sufficiently severe or pervasive to create an intimidating, hostile, or
43 offensive work environment shall be based upon the totality of the
44 circumstances. In evaluating the severity or pervasiveness of the
45 alleged harassing conduct, the cumulative effect of all incidents of
46 harassing conduct shall be considered as a whole rather than
47 considering individual incidents in isolation, provided, however,

1 that a single incident of harassing conduct may be sufficiently
2 severe to create a triable issue of fact regarding the existence of an
3 intimidating, hostile, or offensive work environment. De minimis
4 incidents such as petty slights or trivial inconveniences shall not by
5 themselves be actionable under this act, provided however that a
6 court shall consider all evidence, including de minimis or isolated
7 incidents, when evaluating the totality of the circumstances.

8 (b) A determination of whether harassing conduct is sufficiently
9 severe or pervasive so as to create an intimidating, hostile, or
10 offensive work environment shall include a consideration of
11 whether a reasonable person in complainant's protected class would
12 consider the conduct to be sufficiently severe or pervasive to alter
13 the conditions of employment, provided that a complainant's
14 subjective responses to the harassing conduct shall be considered as
15 part of the totality of the circumstances that are relevant to whether
16 a reasonable person belonging to the same protected class would
17 consider the conduct to be sufficiently severe or pervasive to alter
18 the conditions of employment. In addition, the complainant's
19 knowledge of harassment directed to others may be relevant to
20 evaluating whether a hostile work environment exists, whether or
21 not the complainant witnessed the harassing conduct.

22 (c) For purposes of this section, harassing conduct may include
23 but not be limited to physical contact or gestures, threats, abusive or
24 offensive language, damage to or interference with personal
25 property, or offensive written or verbal communications or
26 comments, whether such conduct is of a sexual nature or otherwise.
27 Harassing conduct shall not be construed to require physical contact
28 to qualify as severe or pervasive.

29 (d) It shall not be necessary to demonstrate loss of tangible job
30 benefits to establish a violation of this subsection, nor shall it be
31 necessary for the complainant to prove that the complainant's
32 tangible productivity declined because of the harassing conduct.

33 (2) The following standards shall be applicable for assessing
34 employer liability for hostile work environment harassment
35 pursuant to a negligence theory under P.L.1945, c.169 (C.10:5-1 et
36 seq.):

37 (a) An employer shall be liable for the unlawful harassment if
38 the entity, or its agents or supervisors, knew or should have known
39 of the harassing conduct and failed to take appropriate preventive or
40 corrective action.

41 (b) An employer may be held responsible for the harassing
42 conduct of non-employees if the entity, or its agents or supervisors,
43 knew or should have known of the conduct and failed to take
44 appropriate preventive or corrective action. However, in reviewing
45 cases involving the acts of non-employees, consideration shall be
46 given to the extent of the entity's control and any other
47 responsibility that the entity may have with respect to the conduct
48 of those non-employees.

1 (c) Nothing in this subsection shall be deemed to in any way
2 alter the standard for imposing direct or vicarious liability on the
3 employer for the harassing acts of supervisors or superiors.

4 (3) For purposes of claims brought under this subsection
5 alleging that an employer committed a violation of this section, the
6 definition of “employer” shall include: any person who employs an
7 individual to perform domestic work in their private residence; who
8 employs an individual to perform domestic work in the private
9 residence of a family member; or who is 18 years of age or older
10 and resides in a private residence in which an individual performs
11 domestic work. For purposes of such claims brought by an
12 employee who performs domestic work, it shall also be an unlawful
13 employment practice for an employer to allow any family member
14 or member of their household, regardless of age, to engage in
15 unlawful harassment based on any other category protected by this
16 subsection, or for an employer to keep or request to keep permanent
17 or continuing possession of the employee’s passport or other
18 identifying documents.

19 c. (1) The standard for assessing an unlawful harassment claim
20 under P.L.1945, c.169 (C.10:5-1 et seq.) alleging an intimidating,
21 hostile, or offensive environment in housing or a place of public
22 accommodation, including a school, shall be equivalent to the
23 standard set forth in paragraph (1) of subsection b. of this section,
24 but shall include consideration of whether the harassment created an
25 intimidating, hostile, or offensive environment in housing, school,
26 or other place of public accommodation.

27 (2) The standard for assessing liability of an entity for an
28 unlawful harassment claim under P.L.1945, c.169 (C.10:5-1 et seq.)
29 alleging an intimidating, hostile, or offensive environment in
30 housing or a place of public accommodation, including a school,
31 shall be equivalent to the standard set forth in paragraph (2) of
32 subsection b. of this section, but shall include consideration of
33 whether the entity took appropriate preventive or corrective action
34 in the applicable setting of housing, a school, or other place of
35 public accommodation.

36 (3) The standard for assessing liability of an entity for an
37 unlawful harassment claim under P.L.1945, c.169 (C.10:5-1 et seq.)
38 alleging an intimidating, hostile, or offensive work environment in
39 the context of a business relationship brought pursuant to
40 subsection l. of section 11 of P.L.1945, c.169 (C.10:5-12), shall be
41 equivalent to the standard set forth in paragraph (2) of subsection b.
42 of this section.

43

44 3. (New section) Mandatory workplace policies on unlawful
45 discrimination and harassment, including sexual harassment.

46 a. For purposes of this section, the terms “discrimination” and
47 “harassment” refer to unlawful discrimination or harassment of an

1 individual because of any characteristic of the individual protected
2 by subsection a. of section 11 of P.L.1945, c.169 (C.10:5-12).

3 b. Within one year of the date of enactment of P.L. , c.
4 (C.) (pending before the Legislature as this bill), all employers
5 shall adopt a written nondiscrimination policy that establishes
6 policies and procedures concerning unlawful discrimination and
7 harassment, including sexual harassment, in the workplace which is
8 applicable to all employees in their interactions with each other and
9 with vendors, suppliers, customers, clients, and patrons, and which
10 shall include, at a minimum, the following:

11 (1) a statement that unlawful discrimination or harassment in the
12 workplace will not be tolerated and are considered a form of
13 employee misconduct, and that sanctions will be enforced against
14 individuals engaging in unlawful discrimination or harassment and
15 against supervisory and managerial personnel who knowingly allow
16 such behavior to continue;

17 (2) a definition of unlawful discrimination and unlawful
18 harassment in employment;

19 (3) examples of discriminatory and harassing behaviors
20 prohibited by the policy;

21 (4) a description of the process for filing internal complaints
22 about such discrimination or harassment and the complete contact
23 information of the person or persons to whom complaints should be
24 made;

25 (5) directions as to how to contact the division if a person
26 believes their rights were violated;

27 (6) the statute of limitations periods applicable to filing a claim
28 of unlawful discrimination and harassment under P.L.1945, c.169
29 (C.10:5-1 et seq.);

30 (7) a prohibition on retaliation against those who disclose,
31 report, participate in an investigation of, or otherwise challenge
32 such discrimination or harassment;

33 (8) examples of retaliatory behaviors prohibited by the policy;

34 (9) a description of potential consequences for violating the
35 policy; and

36 (10) a statement of the employer's commitment to conducting
37 prompt, thorough, and impartial investigations of complaints of
38 such discrimination or harassment.

39 c. All employers shall disseminate the policy required in
40 subsection b. of this section at least once annually to all employees,
41 and to each employee:

42 (1) at the beginning of their employment;

43 (2) who complains internally about a violation of the policy, at
44 the time such complaint is made;

45 (3) who is interviewed by the employer or the employer's
46 designee in connection with any investigation of any complaint
47 about a violation of the policy, prior to or at the time of such
48 interview; and

1 (4) whenever any updates to the policy are made.

2 d. All employers shall review the policy at least annually to
3 ensure that it complies with this section and other applicable laws
4 and regulations.

5 e. All employers shall make the policy available in English,
6 Spanish and any language spoken by an employee who does not
7 speak English as their primary language and who has a limited
8 ability or no ability to read, speak, write, or understand English, if
9 the division has made the model policy described in paragraph (1)
10 of subsection f. of this section available in that language.

11 f. The division shall, within six months of the date of
12 enactment of this act, at a minimum:

13 (1) create one model nondiscrimination policy that satisfies the
14 requirements of subsection b. of this section and that can be adopted
15 by employers with fewer than 50 employees if they choose;

16 (2) create one model domestic work anti-harassment policy
17 designed for use by any person who employs an individual to
18 perform domestic work. That model policy shall include, but not be
19 limited to, a definition of unlawful harassment, examples of
20 harassing behaviors prohibited by the policy, the identity and role
21 of the division, directions for how to contact the division, a
22 description of unlawful retaliation, examples of retaliatory
23 behaviors prohibited by the policy, and the applicable statute of
24 limitations periods for bringing a claim under P.L.1945, c.169
25 (C.10:5-1 et seq.); and

26 (3) make the model policies required by paragraphs (1) and (2)
27 of this subsection available at no cost on the division's website in
28 English, Spanish, and any other language deemed appropriate by
29 the director, based on the size of the New Jersey state population
30 that speaks each language and any other factor that the director
31 shall deem relevant.

32 g. Employers with fewer than 50 employees may comply with:

33 (1) subsection b. of this section by adopting the model
34 nondiscrimination policy promulgated by the division pursuant to
35 paragraph (1) of subsection f. of this section and adding the
36 complete contact information of the person or persons to whom
37 complaints should be made;

38 (2) subsection c. of this section by distributing the model
39 nondiscrimination policy promulgated by the division pursuant to
40 paragraph (1) of subsection f. of this section to each employee:

41 (a) at the beginning of their employment;

42 (b) at least once annually;

43 (c) who complains internally about a violation of the policy, at
44 the time such complaint is made;

45 (d) who is interviewed by the employer or the employer's
46 designee in connection with any investigation of any complaint
47 about a violation of the policy, prior to or at the time of such
48 interview; and

- 1 (e) whenever any updates to the policy are made;
- 2 (3) subsection d. of this section by ensuring that they adopt the
3 version of the model nondiscrimination policy promulgated by the
4 division pursuant to paragraph (1) of subsection f. of this section in
5 force at the time those employers conduct their annual review; and
- 6 (4) subsection e. of this section by providing a printed copy of
7 the model nondiscrimination policy promulgated by the division
8 pursuant to paragraph (1) of subsection f. of this section:
- 9 (a) in English; or
- 10 (b) in the language that an employee identifies as their primary
11 language, if such employee has a limited ability or no ability to
12 read, speak, write, or understand English and if the division has
13 made the model policy available in that employee's primary
14 language.
- 15 (5) Nothing in this subsection shall be interpreted as requiring
16 an employer with fewer than 50 employees to adopt the model
17 nondiscrimination policy promulgated by the division pursuant to
18 paragraph (1) of subsection f. of this section rather than adopting its
19 own policy that meets the requirements outlined in subsections b.,
20 c., d., and e. of this section.
- 21 h. In addition to the requirements in subsections b., c., d., and
22 e. of this section, employers with 50 or more employees shall:
- 23 (1) in addition to the content requirements outlined in
24 subsection b. of this section, customize their policy to their specific
25 workplace and industry by, at a minimum, including:
- 26 (a) multiple channels through which an employee may report
27 unlawful discrimination or harassment; and
- 28 (b) a general description of the process by which the employer
29 will conduct prompt, thorough, and impartial investigations and
30 respond to complaints regarding such discrimination or harassment.
- 31 (2) In addition to the dissemination requirements outlined in
32 subsection c. of this section:
- 33 (a) post the policy in a prominent location on the employer's
34 website, provided, however, that nothing in this subsection shall
35 require an employer to create or maintain a website for the sole
36 purpose of posting the policy thereon; and
- 37 (b) disseminate the policy to any employee upon that
38 employee's promotion.
- 39 (3) In addition to the translation requirements outlined in
40 subsection e. of this section, translate the nondiscrimination policy
41 required by subsection b. of this section into any language
42 identified by an employee as their primary language, if such
43 employee does not speak English as their primary language and has
44 a limited ability or no ability to read, speak, write, or understand
45 English.
- 46 i. Any person who employs an individual to perform domestic
47 work in their private residence or in the private residence of a
48 family member is encouraged, at the time of any such hire and at

1 least once annually, to provide to such individual a printed copy of
2 the model domestic work anti-harassment policy promulgated by
3 the division pursuant to paragraph (2) of subsection f. of this
4 section.

5 j. For purposes of this section, an employer has 50 or more
6 employees if such employer employs 50 or more employees,
7 whether employed in New Jersey or not, for each work day during
8 each of 20 or more calendar workweeks in the then current or
9 immediately preceding calendar year.

10 k. Notwithstanding any other provision of P.L.1945, c.169
11 (C.10:5-1 et seq.), nothing in this section shall be construed to
12 permit a private person to file a complaint with the division or
13 initiate an action in superior court alleging a violation of
14 P.L.1945, c.169 (C.10:5-1 et seq.) because of any failure to comply
15 with the provisions of this section. However, the Attorney General
16 or the director may enforce violations of this section and may
17 pursue any penalty or remedy available under P.L.1945, c.169
18 (C.10:5-1 et seq.) in doing so. An employer's compliance with this
19 section, or use of materials provided for herein, shall not, in and of
20 itself, protect the employer from liability under this act.

21

22 4. (New section) Mandatory workplace training on unlawful
23 discrimination and harassment, including sexual harassment.

24 a. For purposes of this section, the terms "discrimination" and
25 "harassment" refer to unlawful discrimination or harassment against
26 an individual because of any characteristic of the individual
27 protected by subsection a. of section 11 of P.L.1945, c.169 (C.10:5-
28 12).

29 b. Beginning one year from the effective date of P.L. , c.
30 (C.) (pending before the Legislature as this bill), all employers
31 shall provide interactive training to all employees other than those
32 employees covered by subsection c. of this section on the
33 nondiscrimination policy required by section 3 of P.L. , c.
34 (C.) (pending before the Legislature as this bill), regarding the
35 prevention of unlawful discrimination and harassment, including
36 sexual harassment, in the workplace. The training shall be provided
37 to all new employees within 90 days of initial hire, and to all
38 employees at least once every two years. Such training shall
39 include, at minimum:

40 (1) A statement that unlawful discrimination or harassment in
41 the workplace will not be tolerated and are considered a form of
42 employee misconduct, and that sanctions will be enforced against
43 individuals engaging in discrimination or harassment and against
44 supervisory and managerial personnel who knowingly allow such
45 behavior to continue;

46 (2) A definition of unlawful discrimination and unlawful
47 harassment in employment;

- 1 (3) Examples of discriminatory and harassing behaviors
 - 2 prohibited by the nondiscrimination policy adopted by the employer
 - 3 pursuant to section 3 of P.L. , c. (C.) (pending before
 - 4 the Legislature as this bill);
 - 5 (4) A description of the process for filing internal complaints
 - 6 about such discrimination or harassment;
 - 7 (5) Directions as to how to contact the division if a person
 - 8 believes their rights were violated;
 - 9 (6) A description of the prohibition on retaliation against those
 - 10 who disclose, report, participate in an investigation of, or otherwise
 - 11 challenge such discrimination or harassment;
 - 12 (7) Examples of retaliatory behaviors prohibited by the
 - 13 nondiscrimination policy adopted by the employer pursuant to
 - 14 section 3 of P.L. , c. (C.) (pending before the
 - 15 Legislature as this bill); and
 - 16 (8) Information concerning bystander intervention.
- 17 c. Beginning one year from the effective date of P.L. , c.
- 18 (C.) (pending before the Legislature as this bill), all employers
- 19 shall provide interactive training to all supervisory employees
- 20 regarding the prevention of unlawful discrimination and harassment
- 21 in the workplace at least once every two years and shall provide
- 22 such training to all new supervisory employees within 90 days of
- 23 initial hire or promotion. Such training shall include, at minimum:
- 24 (1) the topics required by paragraphs (1) through (8) of
 - 25 subsection b. of this section;
 - 26 (2) the specific responsibilities of a supervisor regarding the
 - 27 prevention of discrimination and harassment;
 - 28 (3) the specific responsibilities of a supervisor regarding the
 - 29 prohibitions against retaliation; and
 - 30 (4) measures and corrective actions supervisors may take to
 - 31 appropriately address complaints and instances of discrimination,
 - 32 harassment, and retaliation.
- 33 d. All employers shall keep a record of their employees’
- 34 completion of all trainings required by subsections b. and c. of this
- 35 section. Such records may be electronic. Employers shall maintain
- 36 such records for at least three years and such records must be made
- 37 available for division inspection upon request.
- 38 e. All employers shall review the trainings required by
- 39 subsections b. and c. of this section at least annually to ensure that
- 40 they comply with this section and with other applicable laws and
- 41 regulations.
- 42 f. All employers shall make the trainings required by
- 43 subsections b. and c. of this section available:
- 44 (1) in English; and
 - 45 (2) in any language spoken by an employee who does not speak
 - 46 English as their primary language and who has a limited ability or
 - 47 no ability to read, speak, write, or understand English, if the

1 division has made the training described in subsection g. of this
2 section available in that language.

3 g. In addition to any other actions the division may undertake,
4 it shall, within six months of enactment of P.L. , c. (C.)
5 (pending before the Legislature as this bill):

6 (1) develop an online, one-hour training module that satisfies
7 the requirements of subsection b. of this section and that can be
8 used by employers with fewer than 50 employees if they choose;

9 (2) develop an online, two-hour training module that satisfies
10 the requirements of subsection c. of this section and that can be
11 used by employers with fewer than 50 employees if they choose;
12 and

13 (3) make the training modules required by paragraphs (1) and
14 (2) of this subsection available at no cost on the division's website
15 in English, Spanish, and any other language deemed appropriate by
16 the director, based on the size of the New Jersey state population
17 that speaks each language and any other factor that the director
18 shall deem relevant.

19 h. Employers with fewer than 50 employees may comply with
20 the requirements of subsections b. and c. of this section by requiring
21 their employees to view the model nondiscrimination trainings
22 promulgated by the division pursuant to subsection g. of this
23 section. For any employer that chooses to utilize the model
24 trainings promulgated by the division pursuant to subsection g. of
25 this section, they may also comply with the requirements of:

26 (1) subsection e. of this section by ensuring that they utilize the
27 version of the model nondiscrimination training promulgated by the
28 division pursuant to subsection g. of this section in force at the time
29 such training is given; and

30 (2) subsection f. of this section by directing each employee to
31 the model nondiscrimination trainings made available on the
32 division's website pursuant to subsection g. of this section in
33 English, Spanish, and any other languages deemed appropriate by
34 the director.

35 Nothing in this section shall be interpreted as requiring an
36 employer with fewer than 50 employees to utilize the model
37 nondiscrimination training promulgated by the division pursuant to
38 subsection g. of this section rather than adopting their own
39 nondiscrimination training that meets the minimum requirements
40 outlined in subsections b. and c. of this section.

41 i. Employers with 50 or more employees shall provide the
42 trainings required by subsections b. and c. of this section in a live,
43 in-person setting where participants can ask questions. They may
44 not comply with the requirements of this section by using the model
45 nondiscrimination training promulgated by the division. Such
46 employers shall also provide interpretation at the trainings required
47 by subsections b. and c. of this section for any employee who does

1 not speak English as their primary language and has a limited
2 ability or no ability to read, speak, write, or understand English.

3 j. For purposes of this section, an employer has 50 or more
4 employees if such employer employs 50 or more employees,
5 whether employed in New Jersey or not, for each work day during
6 each of 20 or more calendar workweeks in the then current or
7 immediately preceding calendar year.

8 k. For purposes of this section, “interactive training” means
9 that the training must be participatory. However, except where
10 explicitly required herein, such “interactive training” is not required
11 to be live or facilitated by an in-person instructor in order to satisfy
12 the provisions of this section.

13 l. The training required by this section is intended to establish
14 a minimum threshold and should not discourage any employer from
15 providing for longer, more frequent, or more elaborate training
16 regarding workplace harassment or other forms of unlawful
17 discrimination.

18 m. Notwithstanding any other provision of P.L.1945, c.169
19 (C.10:5-1 et seq.), nothing in this section shall be construed to
20 permit a private person to file a complaint with the division or
21 initiate an action in superior court alleging a violation of
22 P.L.1945, c.169 (C.10:5-1 et seq.), because of any failure to comply
23 with the provisions of this section. However, the Attorney General
24 or the director may enforce violations of this section and may
25 pursue any penalty or remedy available under P.L.1945, c.169
26 (C.10:5-1 et seq.), in doing so. An employer’s compliance with this
27 section, or use of materials provided for herein, shall not, in and of
28 itself, protect the employer from liability for unlawful
29 discrimination or harassment under this act.

30

31 5. (New section) Mandatory reporting on unlawful
32 employment discrimination and harassment, including sexual
33 harassment.

34 a. For purposes of this section, the terms “discrimination” and
35 “harassment” refer to unlawful discrimination or harassment against
36 an individual because of any characteristic of the individual
37 protected by subsection a. of section 11 of P.L.1945, c.169 (C.10:5-
38 12).

39 b. Beginning one year after the date of enactment of this act,
40 employers with 50 or more employees shall be required to collect
41 and annually report to the division the following data on complaints
42 received regarding unlawful workplace discrimination or
43 harassment, including sexual harassment, using the form created
44 and made available on the division’s website pursuant to subsection
45 e. of this section for that purpose: the total number of complaints
46 filed; the number of complaints filed that were found by the
47 employer to be substantiated; the number of complaints filed that

1 were found by the employer to be unsubstantiated; the number of
2 complaints filed whose resolution is still pending.

3 c. The data submitted for each of the categories in subsection
4 b. of this section shall be broken down by how many such
5 complaints involved allegations of unlawful discrimination,
6 harassment, or retaliation, as well as by the protected class or
7 classes that the complainant alleged.

8 d. Employers shall be required to maintain any records related
9 to the complaints reported to the division pursuant to subsections b.
10 and c. of this section for at least three years and such records must
11 be made available for division inspection upon request.

12 e. The division shall, within six months of the date of
13 enactment of this act, create a form to be used by employers when
14 submitting the data required to be reported under subsections b. and
15 c. of this section. The division shall make such form available at no
16 cost on its website.

17 f. For purposes of this section, an employer has 50 or more
18 employees if such employer employs 50 or more employees,
19 whether employed in New Jersey or not, for each work day during
20 each of 20 or more calendar workweeks in the then current or
21 immediately preceding calendar year.

22 g. Notwithstanding any other provision of P.L.1945, c.169
23 (C.10:5-1 et seq.), nothing in this section shall be construed to
24 permit a private person to file a complaint with the division or
25 initiate an action in superior court alleging a violation of
26 P.L.1945, c.169 (C.10:5-1 et seq.) because of any failure to comply
27 with the provisions of this section. However, the Attorney General
28 or the director may enforce violations of this section and may
29 pursue any penalty or remedy available under P.L.1945, c. 169
30 (C.10:5-1 et seq.), in doing so. An employer's compliance with this
31 section, or use of materials provided for herein, shall not, in and of
32 itself, protect the employer from liability for unlawful
33 discrimination or harassment under this act.

34

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

37 5. As used in P.L.1945, c.169 (C.10:5-1 et seq.), unless a
38 different meaning clearly appears from the context:

39 a. "Person" includes one or more individuals, partnerships,
40 associations, organizations, labor organizations, corporations, legal
41 representatives, trustees, trustees in bankruptcy, receivers, and
42 fiduciaries.

43 b. "Employment agency" includes any person undertaking to
44 procure employees or opportunities for others to work.

45 c. "Labor organization" includes any organization which exists
46 and is constituted for the purpose, in whole or in part, of collective
47 bargaining, or of dealing with employers concerning grievances,

1 terms or conditions of employment, or of other mutual aid or
2 protection in connection with employment.

3 d. “Unlawful employment practice” and “unlawful
4 discrimination” include only those unlawful practices and acts
5 specified in section 11 of P.L.1945, c.169 (C.10:5-12), and
6 practices and acts determined, pursuant to section 2 of
7 P.L. , c. (C.) (pending before the Legislature as this bill) to
8 constitute unlawful harassment.

9 e. “Employer” includes all persons as defined in subsection a.
10 of this section unless otherwise specifically exempt under another
11 section of P.L.1945, c.169 (C.10:5-1 et seq.), and includes the State,
12 any political or civil subdivision thereof, and all public officers,
13 agencies, boards, or bodies; provided, however, that employing any
14 person to perform domestic work in an individual’s home or the
15 home of an individual’s family member shall not qualify the
16 individual as an employer, except as set forth in subsections a. and
17 r. of section 11 of P.L.1945, c.169 (C.10:5-12).

18 f. “Employee” **【**does not include any individual employed in
19 the domestic service of any person**】** includes all individuals
20 employed by an employer, without regard to whether any such
21 individual, including an intern, performs such services in exchange
22 for a salary or wage; provided, however, that nothing in this
23 subsection shall be construed to alter the definition of employee
24 under any other law or regulation other than for purposes of
25 P.L.1945, c.169 (C.10:5-1 et seq.).

26 g. “Liability for service in the Armed Forces of the United
27 States” means subject to being ordered as an individual or member
28 of an organized unit into active service in the Armed Forces of the
29 United States by reason of membership in the National Guard, naval
30 militia or a reserve component of the Armed Forces of the United
31 States, or subject to being inducted into such armed forces through
32 a system of national selective service.

33 h. “Division” means the “Division on Civil Rights” created by
34 P.L.1945, c.169 (C.10:5-1 et seq.).

35 i. “Attorney General” means the Attorney General of the State
36 of New Jersey or the Attorney General’s representative or designee.

37 j. “Commission” means the Commission on Civil Rights
38 created by P.L.1945, c.169 (C.10:5-1 et seq.).

39 k. “Director” means the Director of the Division on Civil
40 Rights.

41 l. “A place of public accommodation” shall include, but not be
42 limited to: any tavern, roadhouse, hotel, motel, trailer camp,
43 summer camp, day camp, or resort camp, whether for entertainment
44 of transient guests or accommodation of those seeking health,
45 recreation, or rest; any producer, manufacturer, wholesaler,
46 distributor, retail shop, store, establishment, or concession dealing
47 with goods or services of any kind; any restaurant, eating house, or
48 place where food is sold for consumption on the premises; any

1 place maintained for the sale of ice cream, ice and fruit preparations
2 or their derivatives, soda water or confections, or where any
3 beverages of any kind are retailed for consumption on the premises;
4 any garage, any public conveyance operated on land or water or in
5 the air or any stations and terminals thereof; any bathhouse,
6 boardwalk, or seashore accommodation; any auditorium, meeting
7 place, or hall; any theatre, motion-picture house, music hall, roof
8 garden, skating rink, swimming pool, amusement and recreation
9 park, fair, bowling alley, gymnasium, shooting gallery, billiard and
10 pool parlor, or other place of amusement; any comfort station; any
11 dispensary, clinic, or hospital; any public library; and any
12 kindergarten, primary and secondary school, trade or business
13 school, high school, academy, college and university, or any
14 educational institution under the supervision of the State Board of
15 Education or the Commissioner of Education of the State of New
16 Jersey. Nothing herein contained shall be construed to include or to
17 apply to any institution, bona fide club, or place of accommodation,
18 which is in its nature distinctly private; nor shall anything herein
19 contained apply to any educational facility operated or maintained
20 by a bona fide religious or sectarian institution, and the right of a
21 natural parent or one in loco parentis to direct the education and
22 upbringing of a child under his is hereby affirmed; nor shall
23 anything herein contained be construed to bar any private secondary
24 or post-secondary school from using in good faith criteria other than
25 race, creed, color, national origin, ancestry, gender identity or
26 expression or affectional or sexual orientation in the admission of
27 students.

28 m. "A publicly assisted housing accommodation" shall include
29 all housing built with public funds or public assistance pursuant to
30 P.L.1949, c.300, P.L.1941, c.213, P.L.1944, c.169, P.L.1949, c.303,
31 P.L.1938, c.19, P.L.1938, c.20, P.L.1946, c.52, and
32 P.L.1949, c.184, and all housing financed in whole or in part by a
33 loan, whether or not secured by a mortgage, the repayment of which
34 is guaranteed or insured by the federal government or any agency
35 thereof.

36 n. The term "real property" includes real estate, lands,
37 tenements and hereditaments, corporeal and incorporeal, and
38 leaseholds, provided, however, that, except as to publicly assisted
39 housing accommodations, the provisions of this act shall not apply
40 to the rental: (1) of a single apartment or flat in a two-family
41 dwelling, the other occupancy unit of which is occupied by the
42 owner as a residence; or (2) of a room or rooms to another person or
43 persons by the owner or occupant of a one-family dwelling
44 occupied by the owner or occupant as a residence at the time of
45 such rental. Nothing herein contained shall be construed to bar any
46 religious or denominational institution or organization, or any
47 organization operated for charitable or educational purposes, which
48 is operated, supervised, or controlled by or in connection with a

1 religious organization, in the sale, lease, or rental of real property,
2 from limiting admission to or giving preference to persons of the
3 same religion or denomination or from making such selection as is
4 calculated by such organization to promote the religious principles
5 for which it is established or maintained. Nor does any provision
6 under this act regarding discrimination on the basis of familial
7 status apply with respect to housing for older persons.

8 o. "Real estate broker" includes a person, firm, or corporation
9 who, for a fee, commission, or other valuable consideration, or by
10 reason of promise or reasonable expectation thereof, lists for sale,
11 sells, exchanges, buys or rents, or offers or attempts to negotiate a
12 sale, exchange, purchase, or rental of real estate or an interest
13 therein, or collects or offers or attempts to collect rent for the use of
14 real estate, or solicits for prospective purchasers or assists or directs
15 in the procuring of prospects or the negotiation or closing of any
16 transaction which does or is contemplated to result in the sale,
17 exchange, leasing, renting, or auctioning of any real estate, or
18 negotiates, or offers or attempts or agrees to negotiate a loan
19 secured or to be secured by mortgage or other encumbrance upon or
20 transfer of any real estate for others; or any person who, for
21 pecuniary gain or expectation of pecuniary gain conducts a public
22 or private competitive sale of lands or any interest in lands. In the
23 sale of lots, the term "real estate broker" shall also include any
24 person, partnership, association, or corporation employed by or on
25 behalf of the owner or owners of lots or other parcels of real estate,
26 at a stated salary, or upon a commission, or upon a salary and
27 commission or otherwise, to sell such real estate, or any parts
28 thereof, in lots or other parcels, and who shall sell or exchange, or
29 offer or attempt or agree to negotiate the sale or exchange, of any
30 such lot or parcel of real estate.

31 p. "Real estate salesperson" includes any person who, for
32 compensation, valuable consideration or commission, or other thing
33 of value, or by reason of a promise or reasonable expectation
34 thereof, is employed by and operates under the supervision of a
35 licensed real estate broker to sell or offer to sell, buy or offer to buy
36 or negotiate the purchase, sale, or exchange of real estate, or offers
37 or attempts to negotiate a loan secured or to be secured by a
38 mortgage or other encumbrance upon or transfer of real estate, or to
39 lease or rent, or offer to lease or rent any real estate for others, or to
40 collect rents for the use of real estate, or to solicit for prospective
41 purchasers or lessees of real estate, or who is employed by a
42 licensed real estate broker to sell or offer to sell lots or other parcels
43 of real estate, at a stated salary, or upon a commission, or upon a
44 salary and commission, or otherwise to sell real estate, or any parts
45 thereof, in lots or other parcels.

46 q. "Disability" means physical or sensory disability, infirmity,
47 malformation, or disfigurement which is caused by bodily injury,
48 birth defect, or illness including epilepsy and other seizure

1 disorders, and which shall include, but not be limited to, any degree
2 of paralysis, amputation, lack of physical coordination, blindness or
3 visual impairment, deafness or hearing impairment, muteness or
4 speech impairment, or physical reliance on a service or guide dog,
5 wheelchair, or other remedial appliance or device, or any mental,
6 psychological, or developmental disability, including autism
7 spectrum disorders, resulting from anatomical, psychological,
8 physiological, or neurological conditions which prevents the typical
9 exercise of any bodily or mental functions or is demonstrable,
10 medically or psychologically, by accepted clinical or laboratory
11 diagnostic techniques. Disability shall also mean AIDS or HIV
12 infection.

13 r. "Blind person" or "person who is blind" means any
14 individual whose central visual acuity does not exceed 20/200 in the
15 better eye with correcting lens or whose visual acuity is better than
16 20/200 if accompanied by a limit to the field of vision in the better
17 eye to such a degree that its widest diameter subtends an angle of
18 no greater than 20 degrees.

19 s. "Guide dog" means a dog used to assist persons who are
20 deaf, or which is fitted with a special harness so as to be suitable as
21 an aid to the mobility of a person who is blind, and is used by a
22 person who is blind and has satisfactorily completed a specific
23 course of training in the use of such a dog, and has been trained by
24 an organization generally recognized by agencies involved in the
25 rehabilitation of persons with disabilities, including, but not limited
26 to, those persons who are blind or deaf, as reputable and competent
27 to provide dogs with training of this type.

28 t. "Guide or service dog trainer" means any person who is
29 employed by an organization generally recognized by agencies
30 involved in the rehabilitation of persons with disabilities, including,
31 but not limited to, those persons who are blind, have visual
32 impairments, or are deaf or have hearing impairments, as reputable
33 and competent to provide dogs with training, as defined in this
34 section, and who is actually involved in the training process.

35 u. "Housing accommodation" means any publicly assisted
36 housing accommodation or any real property, or portion thereof,
37 which is used or occupied, or is intended, arranged, or designed to
38 be used or occupied, as the home, residence, or sleeping place of
39 one or more persons, but shall not include any single family
40 residence the occupants of which rent, lease, or furnish for
41 compensation not more than one room therein.

42 v. "Public facility" means any place of public accommodation
43 and any street, highway, sidewalk, walkway, public building, and
44 any other place or structure to which the general public is regularly,
45 normally, or customarily permitted or invited.

46 w. "Deaf person" or "person who is deaf" means any person
47 whose hearing is so severely impaired that the person is unable to
48 hear and understand conversational speech through the unaided ear

- 1 alone, and who must depend primarily on an assistive listening
2 device or visual communication such as writing, lip reading, sign
3 language, and gestures.
- 4 x. "Atypical hereditary cellular or blood trait" means sickle cell
5 trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic
6 fibrosis trait.
- 7 y. "Sickle cell trait" means the condition wherein the major
8 natural hemoglobin components present in the blood of the
9 individual are hemoglobin A (normal) and hemoglobin S (sickle
10 hemoglobin) as defined by standard chemical and physical analytic
11 techniques, including electrophoresis; and the proportion of
12 hemoglobin A is greater than the proportion of hemoglobin S or one
13 natural parent of the individual is shown to have only normal
14 hemoglobin components (hemoglobin A, hemoglobin A2,
15 hemoglobin F) in the normal proportions by standard chemical and
16 physical analytic tests.
- 17 z. "Hemoglobin C trait" means the condition wherein the major
18 natural hemoglobin components present in the blood of the
19 individual are hemoglobin A (normal) and hemoglobin C as defined
20 by standard chemical and physical analytic techniques, including
21 electrophoresis; and the proportion of hemoglobin A is greater than
22 the proportion of hemoglobin C or one natural parent of the
23 individual is shown to have only normal hemoglobin components
24 (hemoglobin A, hemoglobin A2, hemoglobin F) in normal
25 proportions by standard chemical and physical analytic tests.
- 26 aa. "Thalassemia trait" means the presence of the thalassemia
27 gene which in combination with another similar gene results in the
28 chronic hereditary disease Cooley's anemia.
- 29 bb. "Tay-Sachs trait" means the presence of the Tay-Sachs gene
30 which in combination with another similar gene results in the
31 chronic hereditary disease Tay-Sachs.
- 32 cc. "Cystic fibrosis trait" means the presence of the cystic
33 fibrosis gene which in combination with another similar gene
34 results in the chronic hereditary disease cystic fibrosis.
- 35 dd. "Service dog" means any dog individually trained to the
36 requirements of a person with a disability including, but not limited
37 to minimal protection work, rescue work, pulling a wheelchair or
38 retrieving dropped items. This term shall include a "seizure dog"
39 trained to alert or otherwise assist persons with epilepsy or other
40 seizure disorders.
- 41 ee. "Qualified Medicaid applicant" means an individual who is a
42 qualified applicant pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).
- 43 ff. "AIDS" means acquired immune deficiency syndrome as
44 defined by the Centers for Disease Control and Prevention of the
45 United States Public Health Service.
- 46 gg. "HIV infection" means infection with the human
47 immunodeficiency virus or any other related virus identified as a
48 probable causative agent of AIDS.

- 1 hh. “Affectional or sexual orientation” means male or female
2 heterosexuality, homosexuality, or bisexuality by inclination,
3 practice, identity, or expression, having a history thereof or being
4 perceived, presumed, or identified by others as having such an
5 orientation.
- 6 ii. “Heterosexuality” means affectional, emotional, or physical
7 attraction or behavior which is primarily directed towards persons
8 of the other gender.
- 9 jj. “Homosexuality” means affectional, emotional, or physical
10 attraction or behavior which is primarily directed towards persons
11 of the same gender.
- 12 kk. “Bisexuality” means affectional, emotional, or physical
13 attraction or behavior which is directed towards persons of either
14 gender.
- 15 ll. “Familial status” means being the natural parent of a child,
16 the adoptive parent of a child, the resource family parent of a child,
17 having a “parent and child relationship” with a child as defined by
18 State law, or having sole or joint legal or physical custody, care,
19 guardianship, or visitation with a child, or any person who is
20 pregnant or is in the process of securing legal custody of any
21 individual who has not attained the age of 18 years.
- 22 mm. “Housing for older persons” means housing:
- 23 (1) provided under any State program that the Attorney General
24 determines is specifically designed and operated to assist persons
25 who are elderly (as defined in the State program); or provided under
26 any federal program that the United States Department of Housing
27 and Urban Development determines is specifically designed and
28 operated to assist persons who are elderly (as defined in the federal
29 program); or
- 30 (2) intended for, and solely occupied by, persons 62 years of age
31 or older; or
- 32 (3) intended and operated for occupancy by at least one person
33 55 years of age or older per unit. In determining whether housing
34 qualifies as housing for older persons under this paragraph, the
35 Attorney General shall adopt regulations which require at least the
36 following factors:
- 37 (a) the existence of significant facilities and services
38 specifically designed to meet the physical or social needs of older
39 persons, or if the provision of such facilities and services is not
40 practicable, that such housing is necessary to provide important
41 housing opportunities for older persons; and
- 42 (b) that at least 80 percent of the units are occupied by at least
43 one person 55 years of age or older per unit; and
- 44 (c) the publication of, and adherence to, policies and procedures
45 which demonstrate an intent by the owner or manager to provide
46 housing for persons 55 years of age or older.
- 47 Housing shall not fail to meet the requirements for housing for
48 older persons by reason of: persons residing in such housing as of

1 September 13, 1988 not meeting the age requirements of this
2 subsection, provided that new occupants of such housing meet the
3 age requirements of this subsection; or unoccupied units, provided
4 that such units are reserved for occupancy by persons who meet the
5 age requirements of this subsection.

6 nn. “Genetic characteristic” means any inherited gene or
7 chromosome, or alteration thereof, that is scientifically or medically
8 believed to predispose an individual to a disease, disorder, or
9 syndrome, or to be associated with a statistically significant
10 increased risk of development of a disease, disorder, or syndrome.

11 oo. “Genetic information” means the information about genes,
12 gene products, or inherited characteristics that may derive from an
13 individual or family member.

14 pp. “Genetic test” means a test for determining the presence or
15 absence of an inherited genetic characteristic in an individual,
16 including tests of nucleic acids such as DNA, RNA, and
17 mitochondrial DNA, chromosomes, or proteins in order to identify a
18 predisposing genetic characteristic.

19 qq. “Domestic partnership” means a domestic partnership
20 established pursuant to section 4 of P.L.2003, c.246 (C.26:8A-4).

21 rr. “Gender identity or expression” means having or being
22 perceived as having a gender related identity or expression whether
23 or not stereotypically associated with a person’s assigned sex.

24 ss. “Civil Union” means a legally recognized union of two
25 eligible individuals established pursuant to R.S.37:1-1 et seq. and
26 P.L.2006, c.103 (C.37:1-28 et al.).

27 tt. “Premium wages” means additional remuneration for night,
28 weekend, or holiday work, or for standby or irregular duty.

29 uu. “Premium benefit” means an employment benefit, such as
30 seniority, group life insurance, health insurance, disability
31 insurance, sick leave, annual leave, or an educational or pension
32 benefit that is greater than the employment benefit due the
33 employee for an equivalent period of work performed during the
34 regular work schedule of the employee.

35 vv. “Race” is inclusive of traits historically associated with race,
36 including, but not limited to, hair texture, hair type, and protective
37 hairstyles.

38 ww. “Protective hair styles” includes, but is not limited to, such
39 hairstyles as braids, locks, and twists.

40 xx. “Family member” means a child, parent, parent-in-law,
41 sibling, grandparent, grandchild, spouse, domestic partner, or one
42 partner in a civil union couple, or any other individual related by
43 blood to the person, and any other individual that the person shows
44 to have a close association with the person which is the equivalent
45 of a family relationship.

46 yy. “Domestic work” means services related to the care of
47 persons in private residences or maintenance of private residences
48 or their premises, including, but not limited to, services performed

1 by a nanny, au pair, babysitter, house cleaner, housekeeper, maid,
2 caretaker, home care worker, cook, chef, butler, gardener, or
3 household manager; provided, however, that “domestic work” shall
4 not include:

5 (1) any such services provided by a parent, grandparent, spouse,
6 sibling, child, or other immediate family member of the employer;
7 or

8 (2) services limited to casual and occasional house- or pet-
9 sitting duties performed when members of the household are not on
10 the premises.

11 zz. “Intern” means an individual who performs services for an
12 employer on a temporary basis whose work:

13 (1) provides training or supplements training given in an
14 educational environment such that the employability of the
15 individual performing the work may be enhanced;

16 (2) provides experience for the benefit of the individual
17 performing the work; and

18 (3) is performed under the supervision of existing staff.

19 The term “intern” shall include individuals without regard to
20 whether the employer pays them a salary or wage.

21 (cf: P.L.2019, c.436, s.2)

22

23 7. Section 11 of P.L.1945, c.169 (C.10:5-12) is amended to
24 read:

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

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

1 contained shall be construed to bar an employer from refusing to
2 accept for employment or to promote any person over 70 years of
3 age; provided further that it shall not be an unlawful employment
4 practice for a club exclusively social or fraternal to use club
5 membership as a uniform qualification for employment, or for a
6 religious association or organization to utilize religious affiliation
7 as a uniform qualification in the employment of clergy, religious
8 teachers or other employees engaged in the religious activities of
9 the association or organization, or in following the tenets of its
10 religion in establishing and utilizing criteria for employment of an
11 employee; and provided further, that it shall not be an unlawful
12 employment practice to require the retirement of any employee
13 who, for the two-year period immediately before retirement, is
14 employed in a bona fide executive or a high policy-making position,
15 if that employee is entitled to an immediate non-forfeitable annual
16 retirement benefit from a pension, profit sharing, savings or
17 deferred retirement plan, or any combination of those plans, of the
18 employer of that employee which equals in the aggregate at least
19 \$27,000.00; and provided further that an employer may restrict
20 employment to citizens of the United States where such restriction
21 is required by federal law or is otherwise necessary to protect the
22 national interest.

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

27 For purposes of claims brought under this subsection alleging
28 that an employer is liable for an unlawful employment practice
29 because an employee was subjected to sexual harassment or
30 unlawful harassment based on any other category protected by this
31 subsection, the definition of “employer” shall include any person
32 who employs an individual to perform domestic work in their
33 private residence; who employs an individual to perform domestic
34 work in the private residence of a family member; or who is 18
35 years of age or older and resides in a private residence in which an
36 individual performs domestic work.

37 For purposes of such claims brought by an employee who
38 performs domestic work, it shall also be an unlawful employment
39 practice for an employer to allow any family member or member of
40 their household, regardless of age, to engage in sexual harassment
41 or unlawful harassment based on any other category protected by
42 this subsection, or for an employer to keep or request to keep
43 permanent or continuing possession of the employee’s passport or
44 other identifying documents.

45 For the purposes of this subsection, a “bona fide executive” is a
46 top level employee who exercises substantial executive authority
47 over a significant number of employees and a large volume of
48 business. A “high policy-making position” is a position in which a

1 person plays a significant role in developing policy and in
2 recommending the implementation thereof.

3 For the purposes of this subsection, an unlawful employment
4 practice occurs, with respect to discrimination in compensation or
5 in the financial terms or conditions of employment, each occasion
6 that an individual is affected by application of a discriminatory
7 compensation decision or other practice, including, but not limited
8 to, each occasion that wages, benefits, or other compensation are
9 paid, resulting in whole or in part from the decision or other
10 practice.

11 In addition to any other relief authorized by the “Law Against
12 Discrimination,” P.L.1945, c.169 (C.10:5-1 et seq.) for
13 discrimination in compensation or in the financial terms or
14 conditions of employment, liability shall accrue and an aggrieved
15 person may obtain relief for back pay for the entire period of time ,
16 except not more than six years, in which the violation with regard to
17 discrimination in compensation or in the financial terms or
18 conditions of employment has been continuous, if the violation
19 continues to occur within the statute of limitations.

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

28 b. For a labor organization, because of the race, creed, color,
29 national origin, ancestry, age, marital status, civil union status,
30 domestic partnership status, affectional or sexual orientation,
31 gender identity or expression, disability, pregnancy or
32 breastfeeding, or sex of any individual, or because of the liability
33 for service in the Armed Forces of the United States or nationality
34 of any individual, to exclude or to expel from its membership such
35 individual or to discriminate in any way against any of its members,
36 against any applicant for, or individual included in, any apprentice
37 or other training program or against any employer or any individual
38 employed by an employer; provided, however, that nothing herein
39 contained shall be construed to bar a labor organization from
40 excluding from its apprentice or other training programs any person
41 on the basis of sex in those certain circumstances where sex is a
42 bona fide occupational qualification reasonably necessary to the
43 normal operation of the particular apprentice or other training
44 program.

45 c. For any employer or employment agency to print or circulate
46 or cause to be printed or circulated any statement, advertisement or
47 publication, or to use any form of application for employment, or to
48 make an inquiry in connection with prospective employment, which

1 expresses, directly or indirectly, any limitation, specification or
2 discrimination as to race, creed, color, national origin, ancestry,
3 age, marital status, civil union status, domestic partnership status,
4 affectional or sexual orientation, gender identity or expression,
5 nationality, pregnancy or breastfeeding, or sex or liability of any
6 applicant for employment for service in the Armed Forces of the
7 United States, or any intent to make any such limitation,
8 specification or discrimination, unless based upon a bona fide
9 occupational qualification.

10 d. For any person to take reprisals against any person because
11 that person has opposed any practices or acts forbidden under this
12 act or because that person has sought legal advice regarding rights
13 under this act, shared relevant information with legal counsel,
14 shared information with a governmental entity, or filed a complaint,
15 testified or assisted in any proceeding under this act or to coerce,
16 intimidate, threaten or interfere with any person in the exercise or
17 enjoyment of, or on account of that person having aided or
18 encouraged any other person in the exercise or enjoyment of, any
19 right granted or protected by this act.

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

23 f. (1) For any owner, lessee, proprietor, manager,
24 superintendent, agent, or employee of any place of public
25 accommodation directly or indirectly to unlawfully refuse, withhold
26 from or deny to any person any of the accommodations, advantages,
27 facilities or privileges thereof, or to discriminate against any person
28 in the furnishing thereof, or directly or indirectly to publish,
29 circulate, issue, display, post or mail any written or printed
30 communication, notice, or advertisement to the effect that any of
31 the accommodations, advantages, facilities, or privileges of any
32 such place will be refused, withheld from, or denied to any person
33 on account of the race, creed, color, national origin, ancestry,
34 marital status, civil union status, domestic partnership status,
35 pregnancy or breastfeeding, sex, gender identity or expression,
36 affectional or sexual orientation, disability, liability for service in
37 the Armed Forces of the United States or nationality of such person,
38 or that the patronage or custom thereat of any person of any
39 particular race, creed, color, national origin, ancestry, marital status,
40 civil union status, domestic partnership status, pregnancy or
41 breastfeeding status, sex, gender identity or expression, affectional
42 or sexual orientation, disability, liability for service in the Armed
43 Forces of the United States or nationality is unwelcome,
44 objectionable or not acceptable, desired or solicited, and the
45 production of any such written or printed communication, notice or
46 advertisement, purporting to relate to any such place and to be made
47 by any owner, lessee, proprietor, superintendent or manager thereof,
48 shall be presumptive evidence in any action that the same was

1 authorized by such person; provided, however, that nothing
2 contained herein shall be construed to bar any place of public
3 accommodation which is in its nature reasonably restricted
4 exclusively to individuals of one sex, and which shall include but
5 not be limited to any summer camp, day camp, or resort camp,
6 bathhouse, dressing room, swimming pool, gymnasium, comfort
7 station, dispensary, clinic or hospital, or school or educational
8 institution which is restricted exclusively to individuals of one sex,
9 provided individuals shall be admitted based on their gender
10 identity or expression, from refusing, withholding from or denying
11 to any individual of the opposite sex any of the accommodations,
12 advantages, facilities or privileges thereof on the basis of sex;
13 provided further, that the foregoing limitation shall not apply to any
14 restaurant as defined in R.S.33:1-1 or place where alcoholic
15 beverages are served.

16 (2) Notwithstanding the definition of “a place of public
17 accommodation” as set forth in subsection 1. of section 5 of
18 P.L.1945, c.169 (C.10:5-5), for any owner, lessee, proprietor,
19 manager, superintendent, agent, or employee of any private club or
20 association to directly or indirectly refuse, withhold from or deny to
21 any individual who has been accepted as a club member and has
22 contracted for or is otherwise entitled to full club membership any
23 of the accommodations, advantages, facilities or privileges thereof,
24 or to discriminate against any member in the furnishing thereof on
25 account of the race, creed, color, national origin, ancestry, marital
26 status, civil union status, domestic partnership status, pregnancy or
27 breastfeeding, sex, gender identity or expression, affectional or
28 sexual orientation, disability, liability for service in the Armed
29 Forces of the United States or nationality of such person.

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

38 g. For any person, including but not limited to, any owner,
39 lessee, sublessee, assignee or managing agent of, or other person
40 having the right of ownership or possession of or the right to sell,
41 rent, lease, assign, or sublease any real property or part or portion
42 thereof, or any agent or employee of any of these:

43 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
44 to deny to or withhold from any person or group of persons any real
45 property or part or portion thereof because of race, creed, color,
46 national origin, ancestry, marital status, civil union status, domestic
47 partnership status, pregnancy or breastfeeding, sex, gender identity
48 or expression, affectional or sexual orientation, familial status,

1 disability, liability for service in the Armed Forces of the United
2 States, nationality, or source of lawful income used for rental or
3 mortgage payments;

4 (2) To discriminate against any person or group of persons
5 because of race, creed, color, national origin, ancestry, marital
6 status, civil union status, domestic partnership status, pregnancy or
7 breastfeeding, sex, gender identity or expression, affectional or
8 sexual orientation, familial status, disability, liability for service in
9 the Armed Forces of the United States, nationality, or source of
10 lawful income used for rental or mortgage payments in the terms,
11 conditions or privileges of the sale, rental or lease of any real
12 property or part or portion thereof or in the furnishing of facilities
13 or services in connection therewith;

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

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

47 (5) To refuse to rent or lease any real property to another person
48 because that person's family includes children under 18 years of

1 age, or to make an agreement, rental or lease of any real property
2 which provides that the agreement, rental or lease shall be rendered
3 null and void upon the birth of a child. This paragraph shall not
4 apply to housing for older persons as defined in subsection mm. of
5 section 5 of P.L.1945, c.169 (C.10:5-5).

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

8 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
9 sale, rental, lease, assignment, or sublease any real property or part
10 or portion thereof to any person or group of persons or to refuse to
11 negotiate for the sale, rental, lease, assignment, or sublease of any
12 real property or part or portion thereof to any person or group of
13 persons because of race, creed, color, national origin, ancestry,
14 marital status, civil union status, domestic partnership status,
15 familial status, pregnancy or breastfeeding, sex, gender identity or
16 expression, affectional or sexual orientation, liability for service in
17 the Armed Forces of the United States, disability, nationality, or
18 source of lawful income used for rental or mortgage payments, or to
19 represent that any real property or portion thereof is not available
20 for inspection, sale, rental, lease, assignment, or sublease when in
21 fact it is so available, or otherwise to deny or withhold any real
22 property or any part or portion of facilities thereof to or from any
23 person or group of persons because of race, creed, color, national
24 origin, ancestry, marital status, civil union status, domestic
25 partnership status, familial status, pregnancy or breastfeeding, sex,
26 gender identity or expression, affectional or sexual orientation,
27 disability, liability for service in the Armed Forces of the United
28 States, or;

29 (2) To discriminate against any person because of race, creed,
30 color, national origin, ancestry, marital status, civil union status,
31 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 in the terms, conditions or
36 privileges of the sale, rental, lease, assignment or sublease of any
37 real property or part or portion thereof or in the furnishing of
38 facilities or services in connection therewith;

39 (3) To print, publish, circulate, issue, display, post, or mail, or
40 cause to be printed, published, circulated, issued, displayed, posted
41 or mailed any statement, advertisement, publication or sign, or to
42 use any form of application for the purchase, rental, lease,
43 assignment, or sublease of any real property or part or portion
44 thereof or to make any record or inquiry in connection with the
45 prospective purchase, rental, lease, assignment, or sublease of any
46 real property or part or portion thereof which expresses, directly or
47 indirectly, any limitation, specification or discrimination as to race,
48 creed, color, national origin, ancestry, marital status, civil union

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

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

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

31 i. For any person, bank, banking organization, mortgage
32 company, insurance company or other financial institution, lender
33 or credit institution involved in the making or purchasing of any
34 loan or extension of credit, for whatever purpose, whether secured
35 by residential real estate or not, including but not limited to
36 financial assistance for the purchase, acquisition, construction,
37 rehabilitation, repair or maintenance of any real property or part or
38 portion thereof or any agent or employee thereof:

39 (1) To discriminate against any person or group of persons
40 because of race, creed, color, national origin, ancestry, marital
41 status, civil union status, domestic partnership status, pregnancy or
42 breastfeeding, sex, gender identity or expression, affectional or
43 sexual orientation, disability, liability for service in the Armed
44 Forces of the United States, familial status or nationality, in the
45 granting, withholding, extending, modifying, renewing, or
46 purchasing, or in the fixing of the rates, terms, conditions or
47 provisions of any such loan, extension of credit or financial

1 assistance or purchase thereof or in the extension of services in
2 connection therewith;

3 (2) To use any form of application for such loan, extension of
4 credit or financial assistance or to make record or inquiry in
5 connection with applications for any such loan, extension of credit
6 or financial assistance which expresses, directly or indirectly, any
7 limitation, specification or discrimination as to race, creed, color,
8 national origin, ancestry, marital status, civil union status, domestic
9 partnership status, pregnancy or breastfeeding, sex, gender identity
10 or expression, affectional or sexual orientation, disability, liability
11 for service in the Armed Forces of the United States, familial status
12 or nationality or any intent to make any such limitation,
13 specification or discrimination; unless otherwise required by law or
14 regulation to retain or use such information;

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

16 (4) To discriminate against any person or group of persons
17 because of the source of any lawful income received by the person
18 or the source of any lawful rent payment to be paid for the real
19 property; or

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

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

31 k. For any real estate broker, real estate salesperson or
32 employee or agent thereof or any other individual, corporation,
33 partnership, or organization, for the purpose of inducing a
34 transaction for the sale or rental of real property from which
35 transaction such person or any of its members may benefit
36 financially, to represent that a change has occurred or will or may
37 occur in the composition with respect to race, creed, color, national
38 origin, ancestry, marital status, civil union status, domestic
39 partnership status, familial status, pregnancy or breastfeeding, sex,
40 gender identity or expression, affectional or sexual orientation,
41 disability, liability for service in the Armed Forces of the United
42 States, nationality, or source of lawful income used for rental or
43 mortgage payments of the owners or occupants in the block,
44 neighborhood or area in which the real property is located, and to
45 represent, directly or indirectly, that this change will or may result
46 in undesirable consequences in the block, neighborhood or area in
47 which the real property is located, including, but not limited to the

1 lowering of property values, an increase in criminal or anti-social
2 behavior, or a decline in the quality of schools or other facilities.

3 1. For any person to refuse to buy from, sell to, lease from or
4 to, license, contract with, or trade with, provide goods, services or
5 information to, or otherwise do business with any other person on
6 the basis of the race, creed, color, national origin, ancestry, age,
7 pregnancy or breastfeeding, sex, gender identity or expression,
8 affectional or sexual orientation, marital status, civil union status,
9 domestic partnership status, liability for service in the Armed
10 Forces of the United States, disability, nationality, or source of
11 lawful income used for rental or mortgage payments of such other
12 person or of such other person's family members, partners,
13 members, stockholders, directors, officers, managers,
14 superintendents, agents, employees, business associates, suppliers,
15 or customers. This subsection shall not prohibit refusals or other
16 actions (1) pertaining to employee-employer collective bargaining,
17 labor disputes, or unfair labor practices, or (2) made or taken in
18 connection with a protest of unlawful discrimination or unlawful
19 employment practices.

20 m. For any person to:

21 (1) Grant or accept any letter of credit or other document which
22 evidences the transfer of funds or credit, or enter into any contract
23 for the exchange of goods or services, where the letter of credit,
24 contract, or other document contains any provisions requiring any
25 person to discriminate against or to certify that he, she or it has not
26 dealt with any other person on the basis of the race, creed, color,
27 national origin, ancestry, age, pregnancy or breastfeeding, sex,
28 gender identity or expression, affectional or sexual orientation,
29 marital status, civil union status, domestic partnership status,
30 disability, liability for service in the Armed Forces of the United
31 States, or nationality of such other person or of such other person's
32 family members, partners, members, stockholders, directors,
33 officers, managers, superintendents, agents, employees, business
34 associates, suppliers, or customers.

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

40 The provisions of this subsection shall not apply to any letter of
41 credit, contract, or other document which contains any provision
42 pertaining to employee-employer collective bargaining, a labor
43 dispute or an unfair labor practice, or made in connection with the
44 protest of unlawful discrimination or an unlawful employment
45 practice, if the other provisions of such letter of credit, contract, or
46 other document do not otherwise violate the provisions of this
47 subsection.

1 n. For any person to aid, abet, incite, compel, coerce, or induce
2 the doing of any act forbidden by subsections l. and m. of section
3 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
4 do so. Such prohibited conduct shall include, but not be limited to:

5 (1) Buying from, selling to, leasing from or to, licensing,
6 contracting with, trading with, providing goods, services, or
7 information to, or otherwise doing business with any person
8 because that person does, or agrees or attempts to do, any such act
9 or any act prohibited by this subsection; or

10 (2) Boycotting, commercially blacklisting or refusing to buy
11 from, sell to, lease from or to, license, contract with, provide goods,
12 services or information to, or otherwise do business with any person
13 because that person has not done or refuses to do any such act or
14 any act prohibited by this subsection; provided that this subsection
15 shall not prohibit refusals or other actions either pertaining to
16 employee-employer collective bargaining, labor disputes, or unfair
17 labor practices, or made or taken in connection with a protest of
18 unlawful discrimination or unlawful employment practices.

19 o. For any multiple listing service, real estate brokers'
20 organization or other service, organization or facility related to the
21 business of selling or renting dwellings to deny any person access
22 to or membership or participation in such organization, or to
23 discriminate against such person in the terms or conditions of such
24 access, membership, or participation, on account of race, creed,
25 color, national origin, ancestry, age, marital status, civil union
26 status, domestic partnership status, familial status, pregnancy or
27 breastfeeding, sex, gender identity or expression, affectional or
28 sexual orientation, disability, liability for service in the Armed
29 Forces of the United States or nationality.

30 p. Nothing in the provisions of this section shall affect the
31 ability of an employer to require employees to adhere to reasonable
32 workplace appearance, grooming and dress standards not precluded
33 by other provisions of State or federal law, except that an employer
34 shall allow an employee to appear, groom and dress consistent with
35 the employee's gender identity or expression.

36 q. (1) For any employer to impose upon a person as a
37 condition of obtaining or retaining employment, including
38 opportunities for promotion, advancement or transfers, any terms or
39 conditions that would require a person to violate or forego a
40 sincerely held religious practice or religious observance, including
41 but not limited to the observance of any particular day or days or
42 any portion thereof as a Sabbath or other holy day in accordance
43 with the requirements of the religion or religious belief, unless,
44 after engaging in a bona fide effort, the employer demonstrates that
45 it is unable to reasonably accommodate the employee's religious
46 observance or practice without undue hardship on the conduct of the
47 employer's business. Notwithstanding any other provision of law to
48 the contrary, an employee shall not be entitled to premium wages or

1 premium benefits for work performed during hours to which those
2 premium wages or premium benefits would ordinarily be
3 applicable, if the employee is working during those hours only as an
4 accommodation to **【his】** the employee's religious requirements.

5 Nothing in this subsection q. shall be construed as reducing:

6 (a) The number of the hours worked by the employee which are
7 counted towards the accruing of seniority, pension or other benefits;
8 or

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

11 (2) For an employer to refuse to permit an employee to utilize
12 leave, as provided for in this subsection q., which is solely used to
13 accommodate the employee's sincerely held religious observance or
14 practice. Except where it would cause an employer to incur an
15 undue hardship, no person shall be required to remain at **【his】** the
16 person's place of employment during any day or days or portion
17 thereof that, as a requirement of **【his】** the person's religion, **【he】**
18 the person observes as **【his】** the person's Sabbath or other holy day,
19 including a reasonable time prior and subsequent thereto for travel
20 between **【his】** the person's place of employment and **【his】** the
21 person's home; provided that any such absence from work shall,
22 wherever practicable in the reasonable judgment of the employer,
23 be made up by an equivalent amount of time and work at some
24 other mutually convenient time, or shall be charged against any
25 leave with pay ordinarily granted, other than sick leave, and any
26 such absence not so made up or charged, may be treated by the
27 employer of that person as leave taken without pay.

28 (3) (a) For purposes of this subsection q., "undue hardship"
29 means an accommodation requiring unreasonable expense or
30 difficulty, unreasonable interference with the safe or efficient
31 operation of the workplace or a violation of a bona fide seniority
32 system or a violation of any provision of a bona fide collective
33 bargaining agreement.

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

36 (i) The identifiable cost of the accommodation, including the
37 costs of loss of productivity and of retaining or hiring employees or
38 transferring employees from one facility to another, in relation to
39 the size and operating cost of the employer.

40 (ii) The number of individuals who will need the particular
41 accommodation for a sincerely held religious observance or
42 practice.

43 (iii) For an employer with multiple facilities, the degree to
44 which the geographic separateness or administrative or fiscal
45 relationship of the facilities will make the accommodation more
46 difficult or expensive.

1 (c) An accommodation shall be considered to constitute an
2 undue hardship if it will result in the inability of an employee to
3 perform the essential functions of the position in which [he or she]
4 the employee is employed.

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

9 (ii) This subsection q. shall not apply where the uniform
10 application of terms and conditions of attendance to employees is
11 essential to prevent undue hardship to the employer. The burden of
12 proof regarding the applicability of this subparagraph (d) shall be
13 upon the employer.

14 r. For any employer to take reprisals against any employee for
15 requesting from , discussing with, or disclosing to, any other
16 employee or former employee of the employer, a lawyer from
17 whom the employee seeks legal advice, or any government agency
18 information regarding the job title, occupational category, and rate
19 of compensation, including benefits, of the employee or any other
20 employee or former employee of the employer, or the gender, race,
21 ethnicity, military status, or national origin of the employee or any
22 other employee or former employee of the employer, regardless of
23 whether the request was responded to , or to require, as a condition
24 of employment, any employee or prospective employee to sign a
25 waiver, or to otherwise require an employee or prospective
26 employee to agree, not to make those requests or disclosures.
27 Nothing in this subsection shall be construed to require an
28 employee to disclose such information about the employee herself
29 to any other employee or former employee of the employer or to
30 any authorized representative of the other employee or former
31 employee.

32 For purposes of this subsection, the definition of “employer”
33 includes any person who employs an individual to perform domestic
34 work in their private residence; who employs an individual to
35 perform domestic work in the private residence of a family member;
36 or who is 18 years of age or older and resides in a private residence
37 in which an individual performs domestic work.

38 s. For an employer to treat, for employment-related purposes, a
39 woman employee that the employer knows, or should know, is
40 affected by pregnancy or breastfeeding in a manner less favorable
41 than the treatment of other persons not affected by pregnancy or
42 breastfeeding but similar in their ability or inability to work. In
43 addition, an employer of an employee who is a woman affected by
44 pregnancy shall make available to the employee reasonable
45 accommodation in the workplace, such as bathroom breaks, breaks
46 for increased water intake, periodic rest, assistance with manual
47 labor, job restructuring or modified work schedules, and temporary
48 transfers to less strenuous or hazardous work, for needs related to

1 the pregnancy when the employee, based on the advice of her
2 physician, requests the accommodation, and, in the case of an
3 employee breast feeding her infant child, the accommodation shall
4 include reasonable break time each day to the employee and a
5 suitable room or other location with privacy, other than a toilet stall,
6 in close proximity to the work area for the employee to express
7 breast milk for the child, unless the employer can demonstrate that
8 providing the accommodation would be an undue hardship on the
9 business operations of the employer. The employer shall not in any
10 way penalize the employee in terms, conditions or privileges of
11 employment for requesting or using the accommodation. Workplace
12 accommodation provided pursuant to this subsection and paid or
13 unpaid leave provided to an employee affected by pregnancy or
14 breastfeeding shall not be provided in a manner less favorable than
15 accommodations or leave provided to other employees not affected
16 by pregnancy or breastfeeding but similar in their ability or inability
17 to work. This subsection shall not be construed as otherwise
18 increasing or decreasing any employee's rights under law to paid or
19 unpaid leave in connection with pregnancy or breastfeeding.

20 For the purposes of this section "pregnancy or breastfeeding"
21 means pregnancy, childbirth, and breast feeding or expressing milk
22 for breastfeeding, or medical conditions related to pregnancy,
23 childbirth, or breastfeeding, including recovery from childbirth.

24 For the purposes of this subsection, in determining whether an
25 accommodation would impose undue hardship on the operation of
26 an employer's business, the factors to be considered include: the
27 overall size of the employer's business with respect to the number
28 of employees, number and type of facilities, and size of budget; the
29 type of the employer's operations, including the composition and
30 structure of the employer's workforce; the nature and cost of the
31 accommodation needed, taking into consideration the availability of
32 tax credits, tax deductions, and outside funding; and the extent to
33 which the accommodation would involve waiver of an essential
34 requirement of a job as opposed to a tangential or non-business
35 necessity requirement.

36 t. For an employer to pay any of its employees who is a
37 member of a protected class at a rate of compensation, including
38 benefits, which is less than the rate paid by the employer to
39 employees who are not members of the protected class for
40 substantially similar work, when viewed as a composite of skill,
41 effort and responsibility. An employer who is paying a rate of
42 compensation in violation of this subsection shall not reduce the
43 rate of compensation of any employee in order to comply with this
44 subsection. An employer may pay a different rate of compensation
45 only if the employer demonstrates that the differential is made
46 pursuant to a seniority system, a merit system, or the employer
47 demonstrates:

1 (1) That the differential is based on one or more legitimate, bona
2 fide factors other than the characteristics of members of the
3 protected class, such as training, education or experience, or the
4 quantity or quality of production;

5 (2) That the factor or factors are not based on, and do not
6 perpetuate, a differential in compensation based on sex or any other
7 characteristic of members of a protected class;

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

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

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

16 Comparisons of wage rates shall be based on wage rates in all of
17 an employer's operations or facilities. For the purposes of this
18 subsection, "member of a protected class" means an employee who
19 has one or more characteristics, including race, creed, color,
20 national origin, nationality, ancestry, age, marital status, civil union
21 status, domestic partnership status, affectional or sexual orientation,
22 genetic information, pregnancy, sex, gender identity or expression,
23 disability or atypical hereditary cellular or blood trait of any
24 individual, or liability for service in the armed forces, for which
25 subsection a. of this section prohibits an employer from refusing to
26 hire or employ or barring or discharging or requiring to retire from
27 employment or discriminating against the individual in
28 compensation or in terms, conditions or privileges of employment.

29 Nothing in this subsection shall be interpreted to preclude
30 employers from engaging interns in unpaid positions or paying
31 interns at a different rate than other staff, provided, however, that if
32 an employer provides compensation to interns, it may not provide
33 such compensation to interns who are members of a protected class
34 at a rate less than interns who are not members of the protected
35 class for substantially similar work, when viewed as a composite of
36 skill, effort and responsibility.

37 (cf: P.L.2019, c.436, s.3)

38
39 8. Section 1 of P.L.2019, c.39 (C.10:5-12.7) is amended to read
40 as follows:

41 1. a. A provision in any employment contract, including any
42 contract for the performance of domestic work, that waives any
43 substantive or procedural right or remedy relating to a claim of
44 discrimination, retaliation, or harassment shall be deemed against
45 public policy and unenforceable.

46 b. No right or remedy under the "Law Against Discrimination,"
47 P.L.1945, c.169 (C.10:5-1 et seq.) or any other statute or case law
48 shall be prospectively waived.

1 c. This section shall not apply to the terms of any collective
2 bargaining agreement between an employer and the collective
3 bargaining representative of the employees.

4 (cf: P.L.2019, c.39, s.1)

5
6 9. Section 2 of P.L.2019, c.39 (C.10:5-12.8) is amended to read
7 as follows:

8 2. a. A provision in any employment contract or settlement
9 agreement which has the purpose or effect of concealing the details
10 relating to a claim of discrimination, retaliation, or harassment
11 (hereinafter referred to as a “non-disclosure provision”) shall be
12 deemed against public policy and unenforceable against a current or
13 former employee (hereinafter referred to as an “employee”) who is
14 a party to the contract or settlement. If the employee publicly
15 reveals sufficient details of the claim so that the employer is
16 reasonably identifiable, then the non-disclosure provision shall also
17 be unenforceable against the employer.

18 b. Every settlement agreement resolving a discrimination,
19 retaliation, or harassment claim by an employee against an
20 employer shall include a bold, prominently placed notice that
21 although the parties may have agreed to keep the settlement and
22 underlying facts confidential, such a provision in an agreement is
23 unenforceable against the employer if the employee publicly reveals
24 sufficient details of the claim so that the employer is reasonably
25 identifiable.

26 c. Notwithstanding any other provision of law to the contrary,
27 this section shall not be construed to prohibit an employer from
28 requiring an employee to sign an agreement:

29 (1) in which the employee agrees not to enter into competition
30 with the employer during or after employment; or

31 (2) in which the employee agrees not to disclose proprietary
32 information, which includes only non-public trade secrets, business
33 plan and customer information.

34 d. For purposes of claims brought this section, the definition of
35 “employer” includes any person who employs an individual to
36 perform domestic work in their private residence; who employs an
37 individual to perform domestic work in the private residence of a
38 family member; or who is 18 years of age or older and resides in a
39 private residence in which an individual performs domestic work.

40 (cf: P.L.2019, c.39, s.2)

41
42 10. Section 5 of P.L.2019, c.39 (C.10:5-12.11) is amended to
43 read as follows:

44 5. Any person claiming to be aggrieved by a violation of
45 P.L.2019, c.39 (C.10:5-12.7 et seq.) may initiate suit in Superior
46 Court. An action pursuant to this section shall be commenced
47 within **two** three years **next** after the cause of any such action
48 shall have accrued. All remedies available in common law tort

1 actions shall be available to prevailing plaintiffs. These remedies
2 are in addition to any provided by P.L.2019, c.39 (C.10:5-12.7 et
3 seq.) or any other statute. A prevailing plaintiff shall be awarded
4 reasonable **【attorney】** attorney's fees and costs.

5 (cf: P.L.2019, c.39, s.5)

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

9 12. a. (1) Any person claiming to be aggrieved by an unlawful
10 employment practice or an unlawful discrimination may, personally
11 or by an attorney-at-law, make, sign, and file with the division a
12 verified complaint in writing which shall state the name and address
13 of the person, employer, labor organization, employment agency,
14 owner, lessee, proprietor, manager, superintendent, or agent alleged
15 to have committed the unlawful employment practice or unlawful
16 discrimination complained of and which shall set forth the
17 particulars thereof and shall contain such other information as may
18 be required by the division. Such complaint shall be filed with the
19 division or in any municipal office pursuant to P.L.1945, c.169
20 (C.10:5-1 et seq.) within one year after the alleged unlawful
21 employment practice or unlawful discrimination based on any other
22 category protected by P.L.1945, c.169 (C.10:5-1 et seq.). Upon
23 receipt of the complaint, the division shall notify the complainant
24 on a form promulgated by the director of the division and approved
25 by the Attorney General of the complainant's rights under
26 P.L.1945, c.169 (C.10:5-1 et seq.), including the right to file a
27 complaint in the Superior Court to be heard before a jury; of the
28 jurisdictional limitations of the division; and any other provisions of
29 P.L.1945, c.169 (C.10:5-1 et seq.), without interpretation, that may
30 apply to the complaint. The Commissioner of Labor and Workforce
31 Development, the Attorney General, the director, or the
32 Commissioner of Education may, in like manner, make, sign, and
33 file such complaint. Any employer whose employees, or some of
34 them, refuse, or threaten to refuse to cooperate with the provisions
35 of P.L.1945, c.169 (C.10:5-1 et seq.), may file with the division a
36 verified complaint asking for assistance by conciliation or other
37 remedial action.

38 (2) Any complainant, including any person claiming to be
39 aggrieved by an unlawful employment practice or an unlawful
40 discrimination, the Attorney General, the director, the
41 Commissioner of Labor and Workforce Development, or the
42 Commissioner of Education, may initiate suit in Superior Court
43 under P.L.1945, c.169 (C.10:5-1 et seq.) without first filing a
44 complaint with the division or any municipal office. Any such
45 action, other than an action by the Attorney General or the director,
46 shall be commenced within three years after the cause of that action
47 shall have accrued. In such proceedings:

1 (a) Upon the application of any party, a jury trial shall be
2 directed to try the validity of any claim under P.L.1945, c.169
3 (C.10:5-1 et seq.) specified in the suit.

4 (b) All remedies available in common law tort actions shall be
5 available to prevailing plaintiffs, and if the Attorney General or the
6 director is a prevailing plaintiff, those remedies shall be available
7 on behalf of named or unnamed victims. If the suit seeks relief for
8 one or more unnamed members of a protected class, the Attorney
9 General or the director shall have the discretion to settle the suit on
10 such terms as the Attorney General or the director deems
11 appropriate. The injunctive relief set forth in section 16 of
12 P.L.1945, c.169 (C.10:5-17) shall also be available to prevailing
13 plaintiffs. These remedies are in addition to any other provided by
14 P.L.1945, c.169 (C.10:5-1 et seq.) or any other statute.

15 (c) In addition to the remedies set forth in subparagraph (b) of
16 this paragraph, the Attorney General or director may seek and
17 obtain from the Superior Court penalties pursuant to section 2 of
18 P.L.1983, c.412 (C.10:5-14.1a). In the alternative, in lieu of these
19 penalties, the Attorney General or director may seek and obtain
20 punitive damages payable to the State upon a finding that the
21 provisions of P.L.1995, c.142 (C.2A:15-5.9 et al.) are satisfied.

22 Prosecution of such suit in Superior Court under P.L.1945, c.169
23 (C.10:5-1 et seq.) shall bar the filing of a complaint with the
24 division or any municipal office during the pendency of any such
25 suit.

26 (d) If a jury or court determines that an employer has committed
27 an unlawful employment practice prohibited by subsection r. or t. of
28 section 11 of P.L.1945, c.169 (C.10:5-12), the judge shall award
29 three times any monetary damages to the person or persons
30 aggrieved by the violation.

31 (e) Notwithstanding the provisions of section 6 of
32 P.L.1979, c.404 (C.10:5-27.1), if the Attorney General or the
33 director is a prevailing plaintiff, the court shall award reasonable
34 attorney's fees and litigation and investigation costs.

35 b. At any time after 180 days from the filing of a complaint
36 with the division, a complainant may file a request with the division
37 to present the action personally or through counsel to the Office of
38 Administrative Law. Upon such request, the director of the division
39 shall file the action with the Office of Administrative Law,
40 provided that no action may be filed with the Office of
41 Administrative Law where the director of the division has found
42 that no probable cause exists to credit the allegations of the
43 complaint or has otherwise dismissed the complaint.

44 c. A party to an action based upon a violation of
45 P.L.1945, c.169 (C.10:5-1 et seq.) shall mail a copy of the initial
46 pleadings or claims, amended pleadings or claims, counterclaims,
47 briefs, and legal memoranda to the division at the same time as
48 filing such documents with the Office of Administrative Law or the

1 court. Upon application to the Office of Administrative Law or to
2 the court wherein the matter is pending, the division shall be
3 permitted to intervene.
4 (P.L.2019, c.436, s.5)

5
6 12. Section 17 of P.L.1945, c.169 (C.10:5-18) is amended to
7 read as follows:

8 The Attorney General shall establish rules of practice to govern,
9 expedite and effectuate the foregoing procedure and **his** the
10 Attorney General's own actions thereunder. Any complaint filed in
11 the division or in any municipal office pursuant to this act must be
12 so filed within **180 days** one year after the alleged act of
13 discrimination or from the discovery of the alleged act of
14 discrimination.

15 (cf: P.L.1979, c.404, s.4)

16
17 13. This act shall take effect of the first day of the third month
18 following enactment.

19

20

21

STATEMENT

22

23 This bill makes it unlawful discrimination in violation of the
24 "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.)
25 to subject an individual to unlawful harassment, because of the
26 individual's sex or other characteristic protected under that law.

27 The bill sets standards and procedures for determining when
28 unlawful harassment occurs, both for cases of unlawful employment
29 practices and for cases of unlawful discrimination.

30 For a claim that harassment is an unlawful employment practice
31 based on a hostile work environment, determining whether unlawful
32 harassment has occurred is based on factors which include whether
33 the harassing conduct was sufficiently severe or pervasive to create
34 an intimidating, hostile, or offensive work environment, based on
35 the totality of the circumstances, including the cumulative effect of
36 all incidents of harassing conduct affecting all workers in a
37 workplace, regardless of whether or not the conduct involved direct
38 physical contact or threats or loss of job benefits.

39 For a claim that harassment is an unlawful discrimination based
40 on a hostile environment in housing, a school, or other place of
41 public accommodation, determining whether unlawful harassment
42 has occurred is based on the same factors as they would apply to
43 such discrimination.

44 The bill requires employers to establish written
45 nondiscrimination workplace policies to prevent unlawful
46 discrimination and harassment, which explain the policies, and
47 stipulate procedures and remedies for violations. The Division on
48 Civil Rights is directed to create a model nondiscrimination policy

1 that complies with the requirements of the bill and can be adopted
2 by an employer with fewer than 50 employees, and another model
3 policy specifically for employers of domestic workers.

4 The bill requires an employer to provide interactive training to
5 all supervisory employees and all other employees regarding the
6 prevention of unlawful discrimination and harassment in the
7 workplace, and sets standards for the training and the
8 responsibilities of supervisors under the bill.

9 The bill also sets requirements for each employer with 50 or
10 more employees regarding the collection and reporting to the
11 division by an employer of data regarding complaints of violations
12 of the provisions of the bill.

13 The bill extends the protections of the Law Against
14 Discrimination to cover domestic workers.

15 The bill sets or extends the periods of time in which certain
16 actions regarding unlawful discrimination may be taken.