

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 3352

STATE OF NEW JERSEY
219th LEGISLATURE

ADOPTED JUNE 10, 2021

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

SYNOPSIS

Concerns unlawful discrimination and harassment.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Labor Committee.



1 AN ACT concerning unlawful discrimination and harassment,
2 supplementing P.L.1945, c.169, and revising various parts of the
3 statutory law.

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

7
8 1. (New section) Mandatory workplace policies on unlawful
9 discrimination and harassment, including sexual harassment and
10 retaliation.

11 a. For purposes of this section, the terms “discrimination” and
12 “harassment” refer to unlawful discrimination or harassment of an
13 individual because of any characteristic of the individual protected
14 by subsection a. of section 11 of P.L.1945, c.169 (C.10:5-12), and
15 “retaliation” refers to any action taken against an individual in
16 violation of the provisions of subsection d. of section 11 of
17 P.L.1945, c.169 (C.10:5-12).

18 b. Within one year of the date of enactment of P.L. , c.
19 (C.) (pending before the Legislature as this bill), all employers
20 shall adopt a written nondiscrimination policy that establishes
21 policies and procedures concerning unlawful discrimination and
22 harassment, including sexual harassment, in the workplace which is
23 applicable to all employees in their interactions with each other and
24 with vendors, suppliers, customers, clients, invitees, and patrons,
25 and which shall include, at a minimum, the following:

26 (1) a statement that unlawful discrimination or harassment in the
27 workplace will not be tolerated, and that sanctions will be enforced
28 against individuals engaging in unlawful discrimination or
29 harassment and against supervisory and managerial personnel who
30 knowingly allow such behavior to continue;

31 (2) a definition of unlawful discrimination and unlawful
32 harassment in employment;

33 (3) examples of discriminatory and harassing behaviors
34 prohibited by the policy;

35 (4) a description of the process for filing internal complaints
36 about discrimination or harassment and the complete contact
37 information of the person or persons to whom complaints should be
38 made;

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

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

44 (7) a prohibition on retaliation against those who disclose,

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 report, participate in an investigation of, or otherwise challenge
2 discrimination or harassment;
- 3 (8) examples of retaliatory behaviors prohibited by the policy;
- 4 (9) a description of potential consequences for violating the
5 policy; and
- 6 (10) a statement of the employer's commitment to conducting
7 prompt, thorough, and impartial investigations of complaints of
8 such discrimination, harassment, or retaliation.
- 9 c. All employers shall disseminate the policy required in
10 subsection b. of this section at least once annually to all employees,
11 and to each employee:
- 12 (1) at the beginning of employment;
- 13 (2) who complains internally about a violation of the policy, at
14 the time the complaint is made;
- 15 (3) who is interviewed by the employer or the employer's
16 designee in connection with any investigation of any complaint
17 about a violation of the policy, prior to or at the time of the
18 interview; and
- 19 (4) whenever any updates to the policy are made.
- 20 d. All employers shall review the policy at least annually to
21 ensure that it complies with this section and other applicable laws
22 and regulations.
- 23 e. All employers shall make the policy available in English,
24 Spanish and any language spoken by an employee who does not
25 speak English as the employee's primary language and who has a
26 limited ability or no ability to read, speak, write, or understand
27 English.
- 28 f. In addition to the requirements in subsections b., c., d., and
29 e. of this section, employers with 50 or more employees shall:
- 30 (1) in addition to the content requirements outlined in
31 subsection b. of this section, customize their policy to their specific
32 workplace and industry by, at a minimum, including:
- 33 (a) multiple channels through which an employee may report
34 unlawful discrimination or harassment; and
- 35 (b) a general description of the process by which the employer
36 will conduct prompt, thorough, and impartial investigations and
37 respond to complaints regarding such discrimination or harassment.
- 38 (2) In addition to the dissemination requirements outlined in
39 subsection c. of this section:
- 40 (a) post the policy in a prominent location on the employer's
41 website, provided, however, that nothing in this subsection shall
42 require an employer to create or maintain a website for the sole
43 purpose of posting the policy thereon; and
- 44 (b) disseminate the policy to any employee upon that
45 employee's promotion.
- 46 (3) In addition to the translation requirements outlined in
47 subsection e. of this section, translate the nondiscrimination policy
48 required by subsection b. of this section into any language

1 identified by an employee as their primary language, if the
2 employee does not speak English as their primary language and has
3 a limited ability or no ability to read, speak, write, or understand
4 English.

5 g. Any person who employs an individual to perform domestic
6 work in their private residence or in the private residence of a
7 family member shall, at the time of hire and at least once annually,
8 provide to the individual a printed copy of materials made available
9 by the division regarding unlawful discrimination and harassment
10 which shall include an explanations of employer obligations,
11 employee rights, and enforcement procedures.

12 h. For purposes of this section, an employer has 50 or more
13 employees if the employer employs 50 or more employees, whether
14 employed in New Jersey or not, for each work day during each of
15 20 or more calendar workweeks in the then current or immediately
16 preceding calendar year.

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

28

29 2. (New section) Mandatory workplace training on unlawful
30 discrimination and harassment, including sexual harassment.

31 a. For purposes of this section, the terms "discrimination" and
32 "harassment" refer to unlawful discrimination or harassment against
33 an individual because of any one or more characteristics of the
34 individual protected by subsection a. of section 11 of P.L.1945,
35 c.169 (C.10:5-12), and "retaliation" refers to any action taken
36 against an individual in violation of the provisions of subsection d.
37 of section 11 of P.L.1945, c.169 (C.10:5-12).

38 b. Beginning one year from the effective date of P.L. , c.
39 (C.) (pending before the Legislature as this bill), all employers
40 shall provide interactive training to all employees other than those
41 employees covered by subsection c. of this section on the
42 nondiscrimination policy required by section 1 of P.L. , c.
43 (C.) (pending before the Legislature as this bill), regarding the
44 prevention of unlawful discrimination and harassment, including
45 sexual harassment, in the workplace. The training shall be provided
46 to all new employees within 90 days of initial hire, and to all
47 employees annually. Employers shall track annual training either
48 by a calendar year or from the day of the last training delivery. If

1 an employer sponsors online asynchronous learning, employees
2 may take the training incrementally throughout the training year, as
3 long as all of the concepts required by subsections b. and c. of this
4 section are presented to each employee throughout the year. The
5 training shall include, at minimum:

6 (1) A statement that unlawful discrimination or harassment in
7 the workplace will not be tolerated, and that sanctions will be
8 enforced against individuals engaging in discrimination or
9 harassment and against supervisory and managerial personnel who
10 knowingly or negligently allow the discrimination or harassment to
11 continue;

12 (2) A definition of unlawful discrimination and unlawful
13 harassment in employment;

14 (3) Examples of discriminatory and harassing behaviors
15 prohibited by the nondiscrimination policy adopted by the employer
16 pursuant to section 1 of P.L. , c. (C.) (pending before
17 the Legislature as this bill);

18 (4) A description of the process for filing internal complaints
19 about discrimination or harassment;

20 (5) Directions as to how to contact the division if a person
21 believes their rights were violated;

22 (6) A description of the prohibition on retaliation against those
23 who disclose, report, participate in an investigation of, or otherwise
24 challenge discrimination or harassment;

25 (7) Examples of retaliatory behaviors prohibited by the
26 nondiscrimination policy adopted by the employer pursuant to
27 section 1 of P.L. , c. (C.) (pending before the
28 Legislature as this bill);

29 (8) Information concerning bystander intervention; and

30 (9) Information regarding internal and external resources
31 available to employees.

32 c. Beginning one year from the effective date of P.L. , c.
33 (C.) (pending before the Legislature as this bill), all employers
34 shall provide interactive training to all supervisory employees
35 regarding the prevention of unlawful discrimination and harassment
36 in the workplace. The training shall be provided to all new
37 supervisory employees within 90 days of initial hire, and to all
38 supervisory employees annually. The training shall include, at
39 minimum:

40 (1) the topics required by paragraphs (1) through (8) of
41 subsection b. of this section;

42 (2) the specific responsibilities of a supervisor regarding the
43 prevention of discrimination and harassment;

44 (3) the specific responsibilities of a supervisor regarding the
45 prohibitions against retaliation; and

46 (4) measures and corrective actions supervisors may take to
47 appropriately address complaints and instances of discrimination,
48 harassment, and retaliation.

- 1 d. All employers shall keep a record of their employees’
2 completion of all trainings required by subsections b. and c. of this
3 section. The records may be electronic. Employers shall maintain
4 the records for at least four years and make the records available for
5 division inspection upon request. Employers shall provide
6 certification to the division the required training has been
7 conducted.
- 8 e. All employers shall review the trainings required by
9 subsections b. and c. of this section at least annually to ensure that
10 they comply with this section and with other applicable laws and
11 regulations.
- 12 f. All employers shall make the trainings required by
13 subsections b. and c. of this section available:
- 14 (1) in English; and
15 (2) in any language spoken by an employee who does not speak
16 English as their primary language and who has a limited ability or
17 no ability to read, speak, write, or understand English.
- 18 g. Employers with 50 or more employees shall provide the
19 trainings required by subsections b. and c. of this section in a live,
20 in-person setting where participants may ask questions, or by means
21 of online asynchronous learning where employees may ask
22 questions anonymously and receive responses from trainers within
23 two business days. The employers shall also provide interpretation
24 at the trainings required by subsections b. and c. of this section for
25 any employee who does not speak English as their primary
26 language and has a limited ability or no ability to read, speak, write,
27 or understand English.
- 28 h. For purposes of this section, an employer has 50 or more
29 employees if the employer employs 50 or more employees, whether
30 employed in New Jersey or not, for each work day during each of
31 20 or more calendar workweeks in the then current or immediately
32 preceding calendar year.
- 33 i. For purposes of this section, “interactive training” means
34 that the training shall be participatory. If the training is conducted
35 by means of online asynchronous learning, employees may ask
36 questions anonymously and shall receive responses to their
37 questions from trainers within two business days, and the computer
38 program shall enable the monitoring of active employee
39 participation such as time spent watching videos, answering
40 questions and otherwise engaging in the program.
- 41 j. The training required by this section is intended to establish
42 a minimum threshold. An employer may provide longer, more
43 frequent, or more elaborate training regarding workplace
44 harassment or other forms of unlawful discrimination.
- 45 k. Notwithstanding any other provision of P.L.1945, c.169
46 (C.10:5-1 et seq.), nothing in this section shall be construed to
47 permit a private person to file a complaint with the division or
48 initiate an action in superior court alleging a violation of P.L.1945,

1 c.169 (C.10:5-1 et seq.), because of any failure to comply with the
2 provisions of this section. However, the Attorney General or the
3 director may enforce violations of this section and may pursue any
4 penalty or remedy available under P.L.1945, c.169 (C.10:5-1 et
5 seq.), in doing so. An employer's compliance with this section shall
6 not, in and of itself, protect the employer from liability for unlawful
7 discrimination or harassment under this act.

8 1. The division, in collaboration with community, labor and
9 other organizations with experience in addressing issues of sexual
10 harassment and other unlawful discrimination in workplaces, shall
11 create curricula for the training for employers and employees
12 required pursuant to this section, and for use by the organizations to
13 create materials and programs to educate members of their
14 communities about sexual harassment and other unlawful
15 discrimination in workplaces, employee rights and remedies with
16 respect to harassment and discrimination, and counseling and other
17 supportive services. The division shall provide appropriate grants
18 to the organizations with which it collaborates pursuant to this
19 subsection to compensation the organizations for their expenses
20 incurred in the collaboration.

21

22 3. (New section) Mandatory reporting on unlawful employment
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), and "retaliation" refers to any action taken against an
29 individual in violation of the provisions of subsection d. of section
30 11 of P.L.1945, c.169 (C.10:5-12).

31 b. Beginning one year after the date of enactment of P.L. , c.
32 (C.) (pending before the Legislature as this bill), employers
33 with 50 or more employees shall be required to collect and annually
34 report to the division the following data on complaints received
35 regarding unlawful workplace discrimination, harassment, including
36 sexual harassment, or retaliation, using the form created and made
37 available on the division's website pursuant to subsection e. of this
38 section for that purpose:

- 39 (1) the total number of complaints filed;
40 (2) the number of complaints filed that were found by the
41 employer to be substantiated;
42 (3) the number of complaints filed that were found by the
43 employer to be unsubstantiated; and
44 (4) the number of complaints filed whose resolution is still
45 pending.

46 c. The data submitted for each of the categories in subsection
47 b. of this section shall be broken down by how many of those
48 complaints involved allegations of unlawful discrimination,

1 harassment, or retaliation, as well as by the protected class or
2 classes that the complainant alleged.

3 d. Employers shall be required to maintain any records related
4 to the complaints reported to the division pursuant to subsections b.
5 and c. of this section for at least four years. Employers shall make
6 the records available for division inspection upon request.

7 e. The division shall, within six months of the date of
8 enactment of P.L. , c. (C.) (pending before the
9 Legislature as this bill), create a form to be used by employers
10 when submitting the data required to be reported under subsections
11 b. and c. of this section. The division shall make the form available
12 at no cost on its website.

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

18 g. 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 P.L.1945,
22 c.169 (C.10:5-1 et seq.) because of any failure to comply with the
23 provisions of this section. However, the Attorney General or the
24 director may enforce violations of this section and may pursue any
25 penalty or remedy available under P.L.1945, c. 169 (C.10:5-1 et
26 seq.), in doing so. An employer's compliance with this section, or
27 use of materials provided for herein, shall not, in and of itself,
28 protect the employer from liability for unlawful discrimination or
29 harassment under this act.

30
31 4. (New section) P.L.1945, c.169 (C.10:5-1 et seq.) shall be
32 construed to prohibit unlawful discrimination and other unlawful
33 practices not only against an individual because the individual is a
34 member of a protected class, as described in P.L.1945, c.169
35 (C.10:5-1 et seq.), but also against an individual because the
36 individual is:

37 a. Perceived to be a member of a protected class;

38 b. Associated with an individual who is a member of or is
39 perceived to be a member of a protected class;

40 c. A member of a protected class who is in transition to being a
41 member of another protected class;

42 d. A member of one protected class who is in transition from
43 one state in that protected class to another state within that or
44 another protected class, or

45 e. A member, or is perceived to be a member, of more than one
46 protected class.

1 5. (New section) Notwithstanding any other provisions of law,
2 including the provisions of R.S.34:15-8, a claim made by an
3 employee or a dependent of the employee for compensation under
4 the workers' compensation law, R.S.34:15-1 et seq., shall not
5 preclude the filing by, or on behalf of, the employee or dependent
6 of a complaint regarding an unlawful employment practice with the
7 Division on Civil Rights or in Superior Court pursuant to P.L.1945,
8 c.169 (C.10:5-1 et seq.) seeking relief for damages caused by the
9 unlawful employment practice, even if the damages include
10 damages compensable under the claim made for workers'
11 compensation.

12

13 6. Section 1 of P.L.1938, c.295 (C.10:3-1) is amended to read
14 as follows:

15 1. In the selection of persons for employment in the service of
16 the State, or of any county or municipality thereof, no appointing
17 officer shall discriminate against any such applicant because such
18 applicant has attained the age of at least 40 years, at the time of said
19 application for employment. Any provisions of law, executive
20 order, rule or regulation to the contrary notwithstanding, no person
21 other than a justice of the Supreme Court or a judge of the Superior
22 Court pursuant to Article VI, Section VI, paragraph 3 of the
23 Constitution of the State of New Jersey, or a judge of the Tax
24 Court, or a judge of the Office of Administrative Law or a judge of
25 the Division of Workers' Compensation, or a member of the
26 Division of State Police, employed in the service of the State, or of
27 any county or municipality thereof, or a member of a police or fire
28 department employed in the service of the State or of any county or
29 municipality thereof, shall be required to retire upon the attainment
30 of a particular age unless the public employer can show that [the
31 retirement age bears a manifest relationship to the employment in
32 question or that] the person in the service of the State, or of any
33 county or municipality thereof, is unable to adequately perform the
34 person's duties. A contract of tenure or similar arrangement
35 providing for tenure shall not bar a public employer from showing
36 that [a retirement age bears a manifest relationship to the
37 employment in question or that] the person in the service of the
38 State, or of any county or municipality thereof, is unable to
39 adequately perform the person's duties. A person in the employ of
40 the State, or of any county or municipality thereof, who is required
41 to retire upon the attainment of a particular age in violation of this
42 section shall be entitled to reinstatement with back pay and interest,
43 and any remedy available for violations of P.L.1945, c.169 (C.10:5-
44 1 et seq.).

45 (cf: P.L.1999, c.380, s.15)

46

47 7. Section 5 of P.L.1945, c.169 (C.10:5-5) is amended to read
48 as follows:

- 1 5. As used in P.L.1945, c.169 (C.10:5-1 et seq.), unless a
2 different meaning clearly appears from the context:
- 3 a. “Person” includes one or more individuals, partnerships,
4 associations, organizations, labor organizations, corporations, legal
5 representatives, trustees, trustees in bankruptcy, receivers, and
6 fiduciaries.
- 7 b. “Employment agency” includes any person undertaking to
8 procure employees or opportunities for others to work.
- 9 c. “Labor organization” includes any organization which exists
10 and is constituted for the purpose, in whole or in part, of collective
11 bargaining, or of dealing with employers concerning grievances,
12 terms or conditions of employment, or of other mutual aid or
13 protection in connection with employment.
- 14 d. “Unlawful employment practice” and “unlawful
15 discrimination” include only those unlawful practices and acts
16 specified in section 11 of P.L.1945, c.169 (C.10:5-12).
- 17 e. “Employer” includes all persons as defined in subsection a.
18 of this section unless otherwise specifically exempt under another
19 section of P.L.1945, c.169 (C.10:5-1 et seq.), and includes the State,
20 any political or civil subdivision thereof, and all public officers,
21 agencies, boards, or bodies; and, in the employment of any
22 individual to perform domestic work, includes any person who
23 employs the individual to perform domestic work in the person’s
24 private residence, who employs an individual to perform domestic
25 work in the private residence of a family member of the person, or
26 who is 18 years of age or older and resides in a private residence in
27 which an individual performs domestic work.
- 28 f. “Employee” **【**does not include any individual employed in
29 the domestic service of any person**】** includes all individuals
30 employed by an employer, without regard to whether the individual,
31 including an independent contractor, temporary worker, intern,
32 fellow, apprentice, or trainee, performs services in exchange for a
33 salary or wage, and regardless of whether the individual owns
34 shares of stocks in the employer; provided, however, that nothing in
35 this subsection shall be construed to alter the definition of employee
36 under any other law or regulation other than for purposes of
37 P.L.1945, c.169 (C.10:5-1 et seq.).
- 38 g. “Liability for service in the Armed Forces of the United
39 States” means subject to being ordered as an individual or member
40 of an organized unit into active service in the Armed Forces of the
41 United States by reason of membership in the National Guard, naval
42 militia or a reserve component of the Armed Forces of the United
43 States, or subject to being inducted into such armed forces through
44 a system of national selective service.
- 45 h. “Division” means the “Division on Civil Rights” created by
46 P.L.1945, c.169 (C.10:5-1 et seq.).
- 47 i. “Attorney General” means the Attorney General of the State
48 of New Jersey or the Attorney General’s representative or designee.

- 1 j. “Commission” means the Commission on Civil Rights
2 created by P.L.1945, c.169 (C.10:5-1 et seq.).
- 3 k. “Director” means the Director of the Division on Civil
4 Rights.
- 5 l. “A place of public accommodation” shall include, but not be
6 limited to: any tavern, roadhouse, hotel, motel, trailer camp,
7 summer camp, day camp, or resort camp, whether for entertainment
8 of transient guests or accommodation of those seeking health,
9 recreation, or rest; any producer, manufacturer, wholesaler,
10 distributor, retail shop, store, establishment, or concession dealing
11 with goods or services of any kind; any restaurant, eating house, or
12 place where food is sold for consumption on the premises; any
13 place maintained for the sale of ice cream, ice and fruit preparations
14 or their derivatives, soda water or confections, or where any
15 beverages of any kind are retailed for consumption on the premises;
16 any garage, any public conveyance operated on land or water or in
17 the air or any stations and terminals thereof; any bathhouse,
18 boardwalk, or seashore accommodation; any auditorium, meeting
19 place, or hall; any theatre, motion-picture house, music hall, roof
20 garden, skating rink, swimming pool, amusement and recreation
21 park, fair, bowling alley, gymnasium, shooting gallery, billiard and
22 pool parlor, or other place of amusement; any comfort station; any
23 dispensary, clinic, or hospital; any public library; and any
24 kindergarten, primary and secondary school, trade or business
25 school, high school, academy, college and university, or any
26 educational institution under the supervision of the State Board of
27 Education or the Commissioner of Education of the State of New
28 Jersey. Nothing herein contained shall be construed to include or to
29 apply to any institution, bona fide club, or place of accommodation,
30 which is in its nature distinctly private; nor shall anything herein
31 contained apply to any educational facility operated or maintained
32 by a bona fide religious or sectarian institution, and the right of a
33 natural parent or one in loco parentis to direct the education and
34 upbringing of a child under his is hereby affirmed; nor shall
35 anything herein contained be construed to bar any private secondary
36 or post-secondary school from using in good faith criteria other than
37 race, creed, color, national origin, ancestry, gender identity or
38 expression or affectional or sexual orientation in the admission of
39 students.
- 40 m. “A publicly assisted housing accommodation” shall include
41 all housing built with public funds or public assistance pursuant to
42 P.L.1949, c.300, P.L.1941, c.213, P.L.1944, c.169, P.L.1949, c.303,
43 P.L.1938, c.19, P.L.1938, c.20, P.L.1946, c.52, and P.L.1949,
44 c.184, and all housing financed in whole or in part by a loan,
45 whether or not secured by a mortgage, the repayment of which is
46 guaranteed or insured by the federal government or any agency
47 thereof.

1 n. The term “real property” includes real estate, lands,
2 tenements and hereditaments, corporeal and incorporeal, and
3 leaseholds, provided, however, that, except as to publicly assisted
4 housing accommodations, the provisions of this act shall not apply
5 to the rental: (1) of a single apartment or flat in a two-family
6 dwelling, the other occupancy unit of which is occupied by the
7 owner as a residence; or (2) of a room or rooms to another person or
8 persons by the owner or occupant of a one-family dwelling
9 occupied by the owner or occupant as a residence at the time of
10 such rental. Nothing herein contained shall be construed to bar any
11 religious or denominational institution or organization, or any
12 organization operated for charitable or educational purposes, which
13 is operated, supervised, or controlled by or in connection with a
14 religious organization, in the sale, lease, or rental of real property,
15 from limiting admission to or giving preference to persons of the
16 same religion or denomination or from making such selection as is
17 calculated by such organization to promote the religious principles
18 for which it is established or maintained. Nor does any provision
19 under this act regarding discrimination on the basis of familial
20 status apply with respect to housing for older persons.

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

44 p. “Real estate salesperson” includes any person who, for
45 compensation, valuable consideration or commission, or other thing
46 of value, or by reason of a promise or reasonable expectation
47 thereof, is employed by and operates under the supervision of a
48 licensed real estate broker to sell or offer to sell, buy or offer to buy

1 or negotiate the purchase, sale, or exchange of real estate, or offers
2 or attempts to negotiate a loan secured or to be secured by a
3 mortgage or other encumbrance upon or transfer of real estate, or to
4 lease or rent, or offer to lease or rent any real estate for others, or to
5 collect rents for the use of real estate, or to solicit for prospective
6 purchasers or lessees of real estate, or who is employed by a
7 licensed real estate broker to sell or offer to sell lots or other parcels
8 of real estate, at a stated salary, or upon a commission, or upon a
9 salary and commission, or otherwise to sell real estate, or any parts
10 thereof, in lots or other parcels.

11 q. "Disability" means physical or sensory disability, infirmity,
12 malformation, or disfigurement which is caused by bodily injury,
13 birth defect, or illness including epilepsy and other seizure
14 disorders, and which shall include, but not be limited to, any degree
15 of paralysis, amputation, lack of physical coordination, blindness or
16 visual impairment, deafness or hearing impairment, muteness or
17 speech impairment, or physical reliance on a service or guide dog,
18 wheelchair, or other remedial appliance or device, or any mental,
19 psychological, or developmental disability, including autism
20 spectrum disorders, resulting from anatomical, psychological,
21 physiological, or neurological conditions which prevents the typical
22 exercise of any bodily or mental functions or is demonstrable,
23 medically or psychologically, by accepted clinical or laboratory
24 diagnostic techniques. Disability shall also mean AIDS or HIV
25 infection.

26 r. "Blind person" or "person who is blind" means any
27 individual whose central visual acuity does not exceed 20/200 in the
28 better eye with correcting lens or whose visual acuity is better than
29 20/200 if accompanied by a limit to the field of vision in the better
30 eye to such a degree that its widest diameter subtends an angle of
31 no greater than 20 degrees.

32 s. "Guide dog" means a dog used to assist persons who are
33 deaf, or which is fitted with a special harness so as to be suitable as
34 an aid to the mobility of a person who is blind, and is used by a
35 person who is blind and has satisfactorily completed a specific
36 course of training in the use of such a dog, and has been trained by
37 an organization generally recognized by agencies involved in the
38 rehabilitation of persons with disabilities, including, but not limited
39 to, those persons who are blind or deaf, as reputable and competent
40 to provide dogs with training of this type.

41 t. "Guide or service dog trainer" means any person who is
42 employed by an organization generally recognized by agencies
43 involved in the rehabilitation of persons with disabilities, including,
44 but not limited to, those persons who are blind, have visual
45 impairments, or are deaf or have hearing impairments, as reputable
46 and competent to provide dogs with training, as defined in this
47 section, and who is actually involved in the training process.

- 1 u. "Housing accommodation" means any publicly assisted
2 housing accommodation or any real property, or portion thereof,
3 which is used or occupied, or is intended, arranged, or designed to
4 be used or occupied, as the home, residence, or sleeping place of
5 one or more persons, but shall not include any single family
6 residence the occupants of which rent, lease, or furnish for
7 compensation not more than one room therein.
- 8 v. "Public facility" means any place of public accommodation
9 and any street, highway, sidewalk, walkway, public building, and
10 any other place or structure to which the general public is regularly,
11 normally, or customarily permitted or invited, and includes access
12 to public services.
- 13 w. "Deaf person" or "person who is deaf" means any person
14 whose hearing is so severely impaired that the person is unable to
15 hear and understand conversational speech through the unaided ear
16 alone, and who must depend primarily on an assistive listening
17 device or visual communication such as writing, lip reading, sign
18 language, and gestures.
- 19 x. "Atypical hereditary cellular or blood trait" means sickle cell
20 trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic
21 fibrosis trait.
- 22 y. "Sickle cell trait" means the condition wherein the major
23 natural hemoglobin components present in the blood of the
24 individual are hemoglobin A (normal) and hemoglobin S (sickle
25 hemoglobin) as defined by standard chemical and physical analytic
26 techniques, including electrophoresis; and the proportion of
27 hemoglobin A is greater than the proportion of hemoglobin S or one
28 natural parent of the individual is shown to have only normal
29 hemoglobin components (hemoglobin A, hemoglobin A2,
30 hemoglobin F) in the normal proportions by standard chemical and
31 physical analytic tests.
- 32 z. "Hemoglobin C trait" means the condition wherein the major
33 natural hemoglobin components present in the blood of the
34 individual are hemoglobin A (normal) and hemoglobin C as defined
35 by standard chemical and physical analytic techniques, including
36 electrophoresis; and the proportion of hemoglobin A is greater than
37 the proportion of hemoglobin C or one natural parent of the
38 individual is shown to have only normal hemoglobin components
39 (hemoglobin A, hemoglobin A2, hemoglobin F) in normal
40 proportions by standard chemical and physical analytic tests.
- 41 aa. "Thalassemia trait" means the presence of the thalassemia
42 gene which in combination with another similar gene results in the
43 chronic hereditary disease Cooley's anemia.
- 44 bb. "Tay-Sachs trait" means the presence of the Tay-Sachs gene
45 which in combination with another similar gene results in the
46 chronic hereditary disease Tay-Sachs.

- 1 cc. “Cystic fibrosis trait” means the presence of the cystic
2 fibrosis gene which in combination with another similar gene
3 results in the chronic hereditary disease cystic fibrosis.
- 4 dd. “Service dog” means any dog individually trained to the
5 requirements of a person with a disability including, but not limited
6 to minimal protection work, rescue work, pulling a wheelchair or
7 retrieving dropped items. This term shall include a “seizure dog”
8 trained to alert or otherwise assist persons with epilepsy or other
9 seizure disorders.
- 10 ee. “Qualified Medicaid applicant” means an individual who is a
11 qualified applicant pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).
- 12 ff. “AIDS” means acquired immune deficiency syndrome as
13 defined by the Centers for Disease Control and Prevention of the
14 United States Public Health Service.
- 15 gg. “HIV infection” means infection with the human
16 immunodeficiency virus or any other related virus identified as a
17 probable causative agent of AIDS.
- 18 hh. “Affectional or sexual orientation” means male or female
19 heterosexuality, homosexuality, or bisexuality by inclination,
20 practice, identity, or expression, having a history thereof or being
21 perceived, presumed, or identified by others as having such an
22 orientation.
- 23 ii. “Heterosexuality” means affectional, emotional, or physical
24 attraction or behavior which is primarily directed towards persons
25 of the other gender.
- 26 jj. “Homosexuality” means affectional, emotional, or physical
27 attraction or behavior which is primarily directed towards persons
28 of the same gender.
- 29 kk. “Bisexuality” means affectional, emotional, or physical
30 attraction or behavior which is directed towards persons of either
31 gender.
- 32 ll. “Familial status” means being the natural parent of a child,
33 the adoptive parent of a child, the resource family parent of a child,
34 having a “parent and child relationship” with a child as defined by
35 State law, or having sole or joint legal or physical custody, care,
36 guardianship, or visitation with a child, or any person who is
37 pregnant or is in the process of securing legal custody of any
38 individual who has not attained the age of 18 years.
- 39 mm. “Housing for older persons” means housing:
- 40 (1) provided under any State program that the Attorney General
41 determines is specifically designed and operated to assist persons
42 who are elderly (as defined in the State program); or provided under
43 any federal program that the United States Department of Housing
44 and Urban Development determines is specifically designed and
45 operated to assist persons who are elderly (as defined in the federal
46 program); or
- 47 (2) intended for, and solely occupied by, persons 62 years of age
48 or older; or

1 (3) intended and operated for occupancy by at least one person
2 55 years of age or older per unit. In determining whether housing
3 qualifies as housing for older persons under this paragraph, the
4 Attorney General shall adopt regulations which require at least the
5 following factors:

6 (a) the existence of significant facilities and services
7 specifically designed to meet the physical or social needs of older
8 persons, or if the provision of such facilities and services is not
9 practicable, that such housing is necessary to provide important
10 housing opportunities for older persons; and

11 (b) that at least 80 percent of the units are occupied by at least
12 one person 55 years of age or older per unit; and

13 (c) the publication of, and adherence to, policies and procedures
14 which demonstrate an intent by the owner or manager to provide
15 housing for persons 55 years of age or older.

16 Housing shall not fail to meet the requirements for housing for
17 older persons by reason of: persons residing in such housing as of
18 September 13, 1988 not meeting the age requirements of this
19 subsection, provided that new occupants of such housing meet the
20 age requirements of this subsection; or unoccupied units, provided
21 that such units are reserved for occupancy by persons who meet the
22 age requirements of this subsection.

23 nn. "Genetic characteristic" means any inherited gene or
24 chromosome, or alteration thereof, that is scientifically or medically
25 believed to predispose an individual to a disease, disorder, or
26 syndrome, or to be associated with a statistically significant
27 increased risk of development of a disease, disorder, or syndrome.

28 oo. "Genetic information" means the information about genes,
29 gene products, or inherited characteristics that may derive from an
30 individual or family member.

31 pp. "Genetic test" means a test for determining the presence or
32 absence of an inherited genetic characteristic in an individual,
33 including tests of nucleic acids such as DNA, RNA, and
34 mitochondrial DNA, chromosomes, or proteins in order to identify a
35 predisposing genetic characteristic.

36 qq. "Domestic partnership" means a domestic partnership
37 established pursuant to section 4 of P.L.2003, c.246 (C.26:8A-4).

38 rr. "Gender identity or expression" means having or being
39 perceived as having a gender related identity or expression whether
40 or not stereotypically associated with a person's assigned sex.

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

44 tt. "Premium wages" means additional remuneration for night,
45 weekend, or holiday work, or for standby or irregular duty.

46 uu. "Premium benefit" means an employment benefit, such as
47 seniority, group life insurance, health insurance, disability
48 insurance, sick leave, annual leave, or an educational or pension

1 benefit that is greater than the employment benefit due the
2 employee for an equivalent period of work performed during the
3 regular work schedule of the employee.

4 vv. "Race" is inclusive of traits historically associated with race,
5 including, but not limited to, hair texture, hair type, and protective
6 hairstyles.

7 ww. "Protective hair styles" includes, but is not limited to, such
8 hairstyles as braids, locks, and twists.

9 xx. "Family member" means a child, parent, parent-in-law,
10 sibling, grandparent, grandchild, spouse, domestic partner, or one
11 partner in a civil union couple, or any other individual related by
12 blood to the person, and any other individual that the person shows
13 to have a close association with the person which is the equivalent
14 of a family relationship.

15 yy. "Domestic work" means services related to the care of
16 persons in private residences or maintenance of private residences
17 or their premises, including, but not limited to, services performed
18 by a nanny, au pair, babysitter, house cleaner, housekeeper, maid,
19 caretaker, home care worker, cook, chef, butler, gardener, or
20 household manager; except that "domestic work" shall not include:

21 (1) services provided by a parent, grandparent, spouse, sibling,
22 child, or other immediate family member of the employer; or

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

26 zz. "Intern" means an individual who performs services for an
27 employer on a temporary basis whose work:

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

31 (2) provides experience for the benefit of the individual
32 performing the work; and

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

34 The term "intern" shall include individuals without regard to
35 whether the employer pays them a salary or wage.

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

37
38 8. Section 11 of P.L.1945, c.169 (C.10:5-12) is amended to
39 read:

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

42 a. For an employer, because of the race, creed, color, national
43 origin, ancestry, age, marital status, familial status, civil union
44 status, domestic partnership status, affectional or sexual orientation,
45 genetic information, pregnancy or breastfeeding, sex, gender
46 identity or expression, disability or perceived disability, or atypical
47 hereditary cellular or blood trait of any individual, or because of the
48 liability for service in the Armed Forces of the United States or the

1 nationality of any individual, or because of the refusal to submit to
2 a genetic test or make available the results of a genetic test to an
3 employer, to refuse to hire or employ or to bar or to discharge or
4 require to retire, unless justified by lawful considerations other than
5 age, from employment such individual or to discriminate against
6 such individual in compensation or in terms, conditions or
7 privileges of employment or to subject any individual to sexual
8 harassment or other unlawful harassment; provided, however, it
9 shall not be an unlawful employment practice to refuse to accept for
10 employment an applicant who has received a notice of induction or
11 orders to report for active duty in the armed forces; provided further
12 that nothing herein contained shall be construed to bar an employer
13 from refusing to accept for employment any person on the basis of
14 sex in those certain circumstances where sex is a bona fide
15 occupational qualification, reasonably necessary to the normal
16 operation of the particular business or enterprise; **【**provided further
17 that nothing herein contained shall be construed to bar an employer
18 from refusing to accept for employment or to promote any person
19 over 70 years of age**】**; provided further that it shall not be an
20 unlawful employment practice for a club exclusively social or
21 fraternal to use club membership as a uniform qualification for
22 employment, or for a religious association or organization to utilize
23 religious affiliation as a uniform qualification in the employment of
24 clergy, religious teachers or other employees engaged in the
25 religious activities of the association or organization, or in
26 following the tenets of its religion in establishing and utilizing
27 criteria for employment of an employee; **【**provided further, that it
28 shall not be an unlawful employment practice to require the
29 retirement of any employee who, for the two-year period
30 immediately before retirement, is employed in a bona fide executive
31 or a high policy-making position, if that employee is entitled to an
32 immediate non-forfeitable annual retirement benefit from a pension,
33 profit sharing, savings or deferred retirement plan, or any
34 combination of those plans, of the employer of that employee which
35 equals in the aggregate at least \$27,000.00;**】** and provided further
36 that an employer may restrict employment to citizens of the United
37 States where such restriction is required by federal law or is
38 otherwise necessary to protect the national interest.

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

43 **【**For the purposes of this subsection, a "bona fide executive" is a
44 top level employee who exercises substantial executive authority
45 over a significant number of employees and a large volume of
46 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, prior complaints of
4 harassment or unlawful discriminatory practices at the same
5 employer or relevant organization are discoverable and relevant
6 regardless of whether the individual complaining of harassment,
7 discrimination or retaliation witnessed or was aware of the prior
8 complaints.

9 For purposes of this subsection, sexual harassment or other
10 unlawful harassment shall be an unlawful discriminatory practice
11 when it subjects an individual to inferior terms, conditions or
12 privileges of employment because of the individual's membership
13 in any category protected by this subsection. The complainant need
14 not show that the harassment was severe or pervasive. The fact that
15 the individual did not make a complaint about the harassment to the
16 individual's employer or other relevant organization shall not be
17 determinative of whether the employer or organization is liable.
18 Nothing in this section shall require an employee to demonstrate the
19 existence of an individual to whom the employee's treatment is to
20 be compared. It shall be an affirmative defense to liability under
21 this subsection that the harassment does not rise above the level of
22 what a reasonable victim of discrimination of the same protected
23 category would consider petty slights or trivial inconveniences.

24 For purposes of claims regarding sexual or other unlawful
25 harassment brought by an employee who performs domestic work,
26 it shall also be an unlawful employment practice for an employer to
27 allow any family member or member of the employer's household,
28 regardless of age, to engage in sexual harassment or other unlawful
29 harassment based on any other category protected by this
30 subsection, or for an employer to keep or request to keep permanent
31 or continuing possession of the employee's passport or other
32 identifying documents.

33 For the purposes of a claim brought under this subsection
34 alleging that an employer is liable for an unlawful employment
35 practice because an employee was subjected to sexual harassment
36 or other unlawful harassment based on any other category protected
37 by this subsection, it shall not be necessary to demonstrate loss of
38 tangible job benefits to establish a violation of this subsection, nor
39 shall it be necessary for the complainant to prove that the
40 complainant's tangible productivity declined because of the
41 harassing conduct.

42 Incidents that may be sexual harassment or other unlawful
43 harassment in the workplace shall be considered in the aggregate,
44 with conduct of varying types, such as expressions of sex-based
45 hostility, requests for sexual favors, or denial of employment
46 opportunities due to sexual orientation, viewed in totality, rather
47 than in isolation, and conduct based on multiple protected
48 characteristics, such as sex and race, viewed in totality, rather than

1 in isolation. If there is any unwanted disclosure by the employer,
2 actual or threatened, of sensitive personal information of the
3 employee, whether or not such information is true or untrue and
4 whether or not it is related to a protected characteristic, that shall be
5 considered in determining whether conduct constitutes sexual
6 harassment or other unlawful harassment in the workplace.

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

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

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

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

1 c. For any employer or employment agency to print or circulate
2 or cause to be printed or circulated any statement, advertisement or
3 publication, or to use any form of application for employment, or to
4 make an inquiry in connection with prospective employment, which
5 expresses, directly or indirectly, any limitation, specification or
6 discrimination as to race, creed, color, national origin, ancestry,
7 age, marital status, civil union status, domestic partnership status,
8 affectional or sexual orientation, gender identity or expression,
9 disability, nationality, pregnancy or breastfeeding, or sex or liability
10 of any applicant for employment for service in the Armed Forces of
11 the United States, or any intent to make any such limitation,
12 specification or discrimination, unless based upon a bona fide
13 occupational qualification.

14 d. For any person to take reprisals against any person because
15 that person has opposed any practices or acts forbidden under this
16 act or because that person has sought legal advice regarding rights
17 under this act, shared relevant information with legal counsel,
18 shared information with a governmental entity, or filed a complaint,
19 testified or assisted in any proceeding under this act or to coerce,
20 intimidate, threaten or interfere with any person in the exercise or
21 enjoyment of, or on account of that person having aided or
22 encouraged any other person in the exercise or enjoyment of, any
23 right granted or protected by this act. Nothing in this subsection
24 shall prohibit an employee from applying this subsection to
25 retaliatory actions on the part of the employer, regardless of the
26 length of time between the protected action of the employee and the
27 retaliation, provided the retaliation is directly connected to the
28 protected action of the employee.

29 e. For any person, whether an employer or an employee or not,
30 including a co-employee, supervisor, customer, vendor, landlord,
31 subordinate, or any other category of person, to engage in,
32 participate in, aid, abet, incite, compel or coerce the doing of any of
33 the acts forbidden under this act, or to attempt to do so, or to subject
34 an employee to sexual harassment or other unlawful harassment,
35 discrimination, or retaliation.

36 f. (1) For any owner, lessee, proprietor, manager, superintendent,
37 agent, or employee of any place of public accommodation directly
38 or indirectly to refuse, withhold from or deny to any person any of
39 the accommodations, advantages, facilities or privileges thereof, or
40 to discriminate against any person in the furnishing thereof, or to
41 subject any individual to sexual harassment or other unlawful
42 harassment, or directly or indirectly to publish, circulate, issue,
43 display, post or mail any written or printed communication, notice,
44 or advertisement to the effect that any of the accommodations,
45 advantages, facilities, or privileges of any such place will be
46 refused, withheld from, or denied to any person on account of the
47 race, creed, color, national origin, ancestry, marital status, civil
48 union status, domestic partnership status, pregnancy or

1 breastfeeding, sex, gender identity or expression, affectional or
2 sexual orientation, disability, liability for service in the Armed
3 Forces of the United States or nationality of such person, or that the
4 patronage or custom thereof of any person of any particular race,
5 creed, color, national origin, ancestry, marital status, civil union
6 status, domestic partnership status, pregnancy or breastfeeding
7 status, sex, gender identity or expression, affectional or sexual
8 orientation, disability, liability for service in the Armed Forces of
9 the United States or nationality is unwelcome, objectionable or not
10 acceptable, desired or solicited, and the production of any such
11 written or printed communication, notice or advertisement,
12 purporting to relate to any such place and to be made by any owner,
13 lessee, proprietor, superintendent or manager thereof, shall be
14 presumptive evidence in any action that the same was authorized by
15 such person; provided, however, that nothing contained herein shall
16 be construed to bar any place of public accommodation which is in
17 its nature reasonably restricted exclusively to individuals of one
18 sex, and which shall include but not be limited to any summer
19 camp, day camp, or resort camp, bathhouse, dressing room,
20 swimming pool, gymnasium, comfort station, dispensary, clinic or
21 hospital, or school or educational institution which is restricted
22 exclusively to individuals of one sex, provided individuals shall be
23 admitted based on their gender identity or expression, from
24 refusing, withholding from or denying to any individual of the
25 opposite sex any of the accommodations, advantages, facilities or
26 privileges thereof on the basis of sex; provided further, that the
27 foregoing limitation shall not apply to any restaurant as defined in
28 R.S.33:1-1 or place where alcoholic beverages are served.

29 (2) Notwithstanding the definition of "a place of public
30 accommodation" as set forth in subsection l. of section 5 of
31 P.L.1945, c.169 (C.10:5-5), for any owner, lessee, proprietor,
32 manager, superintendent, agent, or employee of any private club or
33 association to directly or indirectly refuse, withhold from or deny to
34 any individual who has been accepted as a club member and has
35 contracted for or is otherwise entitled to full club membership any
36 of the accommodations, advantages, facilities or privileges thereof,
37 or to discriminate against any member in the furnishing thereof on
38 account of the race, creed, color, national origin, ancestry, marital
39 status, civil union status, domestic partnership status, pregnancy or
40 breastfeeding, sex, gender identity, or expression, affectional or
41 sexual orientation, disability, liability for service in the Armed
42 Forces of the United States or nationality of such person.

43 In addition to the penalties otherwise provided for a violation of
44 P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2)
45 of subsection f. of this section is the holder of an alcoholic beverage
46 license issued under the provisions of R.S.33:1-12 for that private
47 club or association, the matter shall be referred to the Director of
48 the Division of Alcoholic Beverage Control who shall impose an

1 appropriate penalty in accordance with the procedures set forth in
2 R.S.33:1-31.

3 g. For any person, including but not limited to, any owner,
4 lessee, sublessee, assignee or managing agent of, or other person
5 having the right of ownership or possession of or the right to sell,
6 rent, lease, assign, or sublease any real property or part or portion
7 thereof, or any agent or employee of any of these:

8 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
9 to deny to or withhold from any person or group of persons any real
10 property or part or portion thereof because of race, creed, color,
11 national origin, ancestry, marital status, civil union status, domestic
12 partnership status, pregnancy or breastfeeding, sex, gender identity
13 or expression, affectional or sexual orientation, familial status,
14 disability, liability for service in the Armed Forces of the United
15 States, nationality, or source of lawful income used for rental or
16 mortgage payments;

17 (2) To discriminate against any person or group of persons
18 because of race, creed, color, national origin, ancestry, marital
19 status, civil union status, domestic partnership status, pregnancy or
20 breastfeeding, sex, gender identity or expression, affectional or
21 sexual orientation, familial status, disability, liability for service in
22 the Armed Forces of the United States, nationality or source of
23 lawful income used for rental or mortgage payments in the terms,
24 conditions or privileges of the sale, rental or lease of any real
25 property or part or portion thereof or in the furnishing of facilities
26 or services in connection therewith;

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

1 advertising or recording a qualification as to sex for any room,
2 apartment, flat in a dwelling or residential facility which is planned
3 exclusively for and occupied by individuals of one sex to any
4 individual of the exclusively opposite sex on the basis of sex
5 provided individuals shall be qualified based on their gender
6 identity or expression;

7 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise
8 to deny to or withhold from any person or group of persons any real
9 property or part or portion thereof because of the source of any
10 lawful income received by the person or the source of any lawful
11 rent payment to be paid for the real property; **[or]**

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

19 (6) To subject any individual to sexual harassment or other
20 unlawful harassment.

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

23 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
24 sale, rental, lease, assignment, or sublease any real property or part
25 or portion thereof to any person or group of persons or to refuse to
26 negotiate for the sale, rental, lease, assignment, or sublease of any
27 real property or part or portion thereof to any person or group of
28 persons because of race, creed, color, national origin, ancestry,
29 marital status, civil union status, domestic partnership status,
30 familial status, pregnancy or breastfeeding, sex, gender identity or
31 expression, affectional or sexual orientation, liability for service in
32 the Armed Forces of the United States, disability, nationality, or
33 source of lawful income used for rental or mortgage payments, or to
34 represent that any real property or portion thereof is not available
35 for inspection, sale, rental, lease, assignment, or sublease when in
36 fact it is so available, or otherwise to deny or withhold any real
37 property or any part or portion of facilities thereof to or from any
38 person or group of persons because of race, creed, color, national
39 origin, ancestry, marital status, civil union status, domestic
40 partnership status, familial status, pregnancy or breastfeeding, sex,
41 gender identity or expression, affectional or sexual orientation,
42 disability, liability for service in the Armed Forces of the United
43 States, or nationality;

44 (2) To discriminate against any person because of race, creed,
45 color, national origin, ancestry, marital status, civil union status,
46 domestic partnership status, familial status, pregnancy or
47 breastfeeding, sex, gender identity or expression, affectional or
48 sexual orientation, disability, liability for service in the Armed

1 Forces of the United States, nationality, or source of lawful income
2 used for rental or mortgage payments in the terms, conditions or
3 privileges of the sale, rental, lease, assignment or sublease of any
4 real property or part or portion thereof or in the furnishing of
5 facilities or services in connection therewith;

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

34 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise
35 to deny to or withhold from any person or group of persons any real
36 property or part or portion thereof because of the source of any
37 lawful income received by the person or the source of any lawful
38 rent payment to be paid for the real property; **[or]**

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

46 (6) To subject any individual to sexual harassment or other
47 unlawful harassment.

1 i. For any person, bank, banking organization, mortgage
2 company, insurance company or other financial institution, lender
3 or credit institution involved in the making or purchasing of any
4 loan or extension of credit, for whatever purpose, whether secured
5 by residential real estate or not, including but not limited to
6 financial assistance for the purchase, acquisition, construction,
7 rehabilitation, repair or maintenance of any real property or part or
8 portion thereof or any agent or employee thereof:

9 (1) To discriminate against any person or group of persons
10 because of race, creed, color, national origin, ancestry, marital
11 status, civil union status, domestic partnership status, pregnancy or
12 breastfeeding, sex, gender identity or expression, affectional or
13 sexual orientation, disability, liability for service in the Armed
14 Forces of the United States, familial status or nationality, in the
15 granting, withholding, extending, modifying, renewing, or
16 purchasing, or in the fixing of the rates, terms, conditions or
17 provisions of any such loan, extension of credit or financial
18 assistance or purchase thereof or in the extension of services in
19 connection therewith;

20 (2) To use any form of application for such loan, extension of
21 credit or financial assistance or to make record or inquiry in
22 connection with applications for any such loan, extension of credit
23 or financial assistance which expresses, directly or indirectly, any
24 limitation, specification or discrimination as to race, creed, color,
25 national origin, ancestry, marital status, civil union status, domestic
26 partnership status, pregnancy or breastfeeding, sex, gender identity
27 or expression, affectional or sexual orientation, disability, liability
28 for service in the Armed Forces of the United States, familial status
29 or nationality or any intent to make any such limitation,
30 specification or discrimination; unless otherwise required by law or
31 regulation to retain or use such information;

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

33 (4) To discriminate against any person or group of persons
34 because of the source of any lawful income received by the person
35 or the source of any lawful rent payment to be paid for the real
36 property; or

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

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

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

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

37 m. For any person to:

38 (1) Grant or accept any letter of credit or other document which
39 evidences the transfer of funds or credit, or enter into any contract
40 for the exchange of goods or services, where the letter of credit,
41 contract, or other document contains any provisions requiring any
42 person to discriminate against or to certify that he, she or it has not
43 dealt with any other person on the basis of the race, creed, color,
44 national origin, ancestry, age, pregnancy or breastfeeding, sex,
45 gender identity or expression, affectional or sexual orientation,
46 marital status, civil union status, domestic partnership status,
47 disability, liability for service in the Armed Forces of the United
48 States, or nationality of such other person or of such other person's

1 family members, partners, members, stockholders, directors,
2 officers, managers, superintendents, agents, employees, business
3 associates, suppliers, or customers.

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

9 The provisions of this subsection shall not apply to any letter of
10 credit, contract, or other document which contains any provision
11 pertaining to employee-employer collective bargaining, a labor
12 dispute or an unfair labor practice, or made in connection with the
13 protest of unlawful discrimination or an unlawful employment
14 practice, if the other provisions of such letter of credit, contract, or
15 other document do not otherwise violate the provisions of this
16 subsection.

17 n. For any person to aid, abet, incite, compel, coerce, or induce
18 the doing of any act forbidden by subsections l. and m. of section
19 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
20 do so. Such prohibited conduct shall include, but not be limited to:

21 (1) Buying from, selling to, leasing from or to, licensing,
22 contracting with, trading with, providing goods, services, or
23 information to, or otherwise doing business with any person
24 because that person does, or agrees or attempts to do, any such act
25 or any act prohibited by this subsection; or

26 (2) Boycotting, commercially blacklisting or refusing to buy
27 from, sell to, lease from or to, license, contract with, provide goods,
28 services or information to, or otherwise do business with any person
29 because that person has not done or refuses to do any such act or
30 any act prohibited by this subsection; provided that this subsection
31 shall not prohibit refusals or other actions either pertaining to
32 employee-employer collective bargaining, labor disputes, or unfair
33 labor practices, or made or taken in connection with a protest of
34 unlawful discrimination or unlawful employment practices.

35 o. For any multiple listing service, real estate brokers'
36 organization or other service, organization or facility related to the
37 business of selling or renting dwellings to deny any person access
38 to or membership or participation in such organization, or to
39 discriminate against such person in the terms or conditions of such
40 access, membership, or participation, on account of race, creed,
41 color, national origin, ancestry, age, marital status, civil union
42 status, domestic partnership status, familial status, pregnancy or
43 breastfeeding, sex, gender identity or expression, affectional or
44 sexual orientation, disability, liability for service in the Armed
45 Forces of the United States or nationality.

46 p. Nothing in the provisions of this section shall affect the
47 ability of an employer to require employees to adhere to reasonable
48 workplace appearance, grooming and dress standards which do not

1 impose requirements on individuals who are members of a protected
2 class not imposed on individuals not members of the protected class
3 or otherwise have the effect of discriminating against members of a
4 protected class, and are not precluded by other provisions of State
5 or federal law, **[except]** provided further that an employer shall
6 allow an employee to appear, groom and dress consistent with the
7 employee's gender identity or expression.

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

26 (a) The number of the hours worked by the employee which are
27 counted towards the accruing of seniority, pension or other benefits;
28 or

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

31 (2) For an employer to refuse to permit an employee to utilize
32 leave, as provided for in this subsection q., which is solely used to
33 accommodate the employee's sincerely held religious observance or
34 practice. Except where it would cause an employer to incur an
35 undue hardship, no person shall be required to remain at **[his]** the
36 person's place of employment during any day or days or portion
37 thereof that, as a requirement of **[his]** the person's religion, **[his]**
38 the person observes as **[his]** the person's Sabbath or other holy day,
39 including a reasonable time prior and subsequent thereto for travel
40 between **[his]** the person's place of employment and **[his]** the
41 person's home; provided that any such absence from work shall,
42 wherever practicable in the reasonable judgment of the employer,
43 be made up by an equivalent amount of time and work at some
44 other mutually convenient time, or shall be charged against any
45 leave with pay ordinarily granted, other than sick leave, and any
46 such absence not so made up or charged, may be treated by the
47 employer of that person as leave taken without pay.

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

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

9 (i) The identifiable cost of the accommodation, including the
10 costs of loss of productivity and of retaining or hiring employees or
11 transferring employees from one facility to another, in relation to
12 the size and operating cost of the employer.

13 (ii) The number of individuals who will need the particular
14 accommodation for a sincerely held religious observance or
15 practice.

16 (iii) For an employer with multiple facilities, the degree to
17 which the geographic separateness or administrative or fiscal
18 relationship of the facilities will make the accommodation more
19 difficult or expensive.

20 (c) An accommodation shall be considered to constitute an
21 undue hardship if it will result in the inability of an employee to
22 perform the essential functions of the position in which **[he or she]**
23 the employee is employed.

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

28 (ii) This subsection q. shall not apply where the uniform
29 application of terms and conditions of attendance to employees is
30 essential to prevent undue hardship to the employer. The burden of
31 proof regarding the applicability of this subparagraph (d) shall be
32 upon the employer.

33 r. For any employer to take reprisals against any employee for
34 requesting from, discussing with, or disclosing to, any other
35 employee or former employee of the employer, a lawyer from
36 whom the employee seeks legal advice, or any government agency
37 information regarding the job title, occupational category, and rate
38 of compensation, including benefits, of the employee or any other
39 employee or former employee of the employer, or the gender, race,
40 ethnicity, military status, or national origin of the employee or any
41 other employee or former employee of the employer, regardless of
42 whether the request was responded to, or to require, as a condition
43 of employment, any employee or prospective employee to sign a
44 waiver, or to otherwise require an employee or prospective
45 employee to agree, not to make those requests or disclosures.
46 Nothing in this subsection shall be construed to require an
47 employee to disclose such information about the employee herself
48 to any other employee or former employee of the employer or to

1 any authorized representative of the other employee or former
2 employee.

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

34 For the purposes of this section "pregnancy or breastfeeding"
35 means pregnancy, childbirth, and breast feeding or expressing milk
36 for breastfeeding, or medical conditions related to pregnancy,
37 childbirth, or breastfeeding, including recovery from childbirth.

38 For the purposes of this subsection, in determining whether an
39 accommodation would impose undue hardship on the operation of
40 an employer's business, the factors to be considered include: the
41 overall size of the employer's business with respect to the number
42 of employees, number and type of facilities, and size of budget; the
43 type of the employer's operations, including the composition and
44 structure of the employer's workforce; the nature and cost of the
45 accommodation needed, taking into consideration the availability of
46 tax credits, tax deductions, and outside funding; and the extent to
47 which the accommodation would involve waiver of an essential

1 requirement of a job as opposed to a tangential or non-business
2 necessity requirement.

3 t. For an employer to pay any of its employees who is a
4 member of a protected class at a rate of compensation, including
5 benefits, which is less than the rate paid by the employer to
6 employees who are not members of the protected class for
7 substantially similar work, when viewed as a composite of skill,
8 effort and responsibility. An employer who is paying a rate of
9 compensation in violation of this subsection shall not reduce the
10 rate of compensation of any employee in order to comply with this
11 subsection. An employer may pay a different rate of compensation
12 only if the employer demonstrates that the differential is made
13 pursuant to a seniority system, a merit system, or the employer
14 demonstrates:

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

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

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

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

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

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

43 Nothing in this subsection shall be interpreted to preclude
44 employers from engaging interns in unpaid positions or paying
45 interns at a different rate than other staff, provided, however, that if
46 an employer provides compensation to interns, the employer shall
47 not provide compensation to interns who are members of a
48 protected class at a rate less than interns who are not members of

1 the protected class for substantially similar work, when viewed as a
2 composite of skill, effort and responsibility.

3 u. This section shall be liberally construed for the
4 accomplishment of the remedial purposes of P.L.1945, c.169
5 (C.10:5-1 et seq.). The construction of similar laws in federal
6 courts or other jurisdictions shall not be used to limit the
7 availability of remedies under P.L.1945, c.169 (C.10:5-1 et seq.),
8 the purpose of which is to maximize deterrence of discriminatory,
9 harassing and retaliatory conduct.

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

11

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

14 1. a. A provision in any employment contract, including any
15 contract for the performance of domestic work, that waives any
16 substantive or procedural right or remedy relating to a claim of
17 discrimination, retaliation, or harassment shall be deemed against
18 public policy and unenforceable.

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

22 c. This section shall not apply to the terms of any collective
23 bargaining agreement between an employer and the collective
24 bargaining representative of the employees.

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

26

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

29 5. Any person claiming to be aggrieved by a violation of
30 P.L.2019, c.39 (C.10:5-12.7 et seq.) may initiate suit in Superior
31 Court. An action pursuant to this section shall be commenced
32 within **【two】** three years **【next】** after the cause of any such action
33 shall have accrued, or after the person became aware of the
34 violation. All remedies available in common law tort actions shall
35 be available to prevailing plaintiffs. These remedies are in addition
36 to any provided by P.L.2019, c.39 (C.10:5-12.7 et seq.) or any other
37 statute. A prevailing plaintiff shall be awarded reasonable
38 **【attorney】** attorney’s fees and costs, and punitive damages may be
39 awarded by the jury.

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

41

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

44 12. a. (1) Any person claiming to be aggrieved by an unlawful
45 employment practice or an unlawful discrimination may, personally
46 or by an attorney-at-law, make, sign, and file with the division a
47 verified complaint in writing which shall state the name and address
48 of the person, employer, labor organization, employment agency,

1 owner, lessee, proprietor, manager, superintendent, or agent alleged
2 to have committed the unlawful employment practice or unlawful
3 discrimination complained of and which shall set forth the
4 particulars thereof and shall contain such other information as may
5 be required by the division. The complaint shall be filed with the
6 division or in any municipal office pursuant to P.L.1945, c.169
7 (C.10:5-1 et seq.) within three years after the occurrence of, or
8 within three years after the person became aware of, an alleged
9 unlawful employment practice or unlawful discrimination based on
10 any other category protected by P.L.1945, c.169 (C.10:5-1 et seq.).
11 Upon receipt of the complaint, the division shall notify the
12 complainant on a form promulgated by the director of the division
13 and approved by the Attorney General of the complainant's rights
14 under P.L.1945, c.169 (C.10:5-1 et seq.), including the right to file
15 a complaint in the Superior Court to be heard before a jury; of the
16 jurisdictional limitations of the division; and any other provisions of
17 P.L.1945, c.169 (C.10:5-1 et seq.), without interpretation, that may
18 apply to the complaint. The Commissioner of Labor and Workforce
19 Development, the Attorney General, the director, or the
20 Commissioner of Education may, in like manner, make, sign, and
21 file such complaint. Any employer whose employees, or some of
22 them, refuse, or threaten to refuse to cooperate with the provisions
23 of P.L.1945, c.169 (C.10:5-1 et seq.), may file with the division a
24 verified complaint asking for assistance by conciliation or other
25 remedial action. The division shall issue a notice of right to sue at
26 the time the division closes an investigation, except that a
27 complainant may request such notice and the termination of an
28 investigation at any time.

29 (2) Any complainant, including any person claiming to be
30 aggrieved by an unlawful employment practice or an unlawful
31 discrimination, the Attorney General, the director, the
32 Commissioner of Labor and Workforce Development, or the
33 Commissioner of Education, may initiate suit in Superior Court
34 under P.L.1945, c.169 (C.10:5-1 et seq.) without first filing a
35 complaint with the division or any municipal office. Filing a
36 complaint with the division shall not cause a complainant to waive
37 the complainant's right to initiate suit in Superior Court. The
38 division's finding of no probable cause shall not preclude the filing
39 of a complaint in Superior Court for a de novo trial. Any such
40 action, other than an action by the Attorney General or the director,
41 shall be commenced within three years after the cause of action
42 shall have accrued, except that this right shall be tolled while the
43 division is conducting any investigation or proceedings under this
44 subsection. The failure to file a complaint or otherwise participate
45 in a relevant process created by the employer prior to filing suit in
46 Superior Court shall not bar the complainant from filing suit or
47 receiving a full recovery. 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 In accordance with existing law, the employer shall remain
32 wholly liable for damages awarded under this subsection and there
33 shall be no apportionment of damages between the employer and
34 individual defendants, provided that co-employers, successive
35 employers, and predecessor employers may also be held liable to
36 those damages. Nothing in this subsection should be construed to
37 limit a jury or court from awarding separate damages against other
38 liable defendants. The defendant shall have the burden of proving
39 the plaintiff failed to mitigate applicable damages.

40 If a jury or court determines that an employer has committed an
41 unlawful employment practice which would lead a reasonable
42 person in the same protected category to find the workplace
43 intolerable or damaging to their health or emotional wellbeing, the
44 jury or court shall determine an employee's voluntary exit from the
45 workplace to be a constructive discharge.

46 (e) Notwithstanding the provisions of section 6 of P.L.1979,
47 c.404 (C.10:5-27.1), if the Attorney General or the director is a

1 prevailing plaintiff, the court shall award reasonable attorney's fees
2 and litigation and investigation costs.

3 b. At any time after 180 days from the filing of a complaint
4 with the division, a complainant may file a request with the division
5 to present the action personally or through counsel to the Office of
6 Administrative Law. Upon such request, the director of the division
7 shall file the action with the Office of Administrative Law,
8 provided that no action may be filed with the Office of
9 Administrative Law, where the director of the division has found
10 that no probable cause exists to credit the allegations of the
11 complaint or has otherwise dismissed the complaint.

12 c. A party to an action based upon a violation of P.L.1945,
13 c.169 (C.10:5-1 et seq.) shall mail a copy of the initial pleadings or
14 claims, amended pleadings or claims, counterclaims, briefs, and
15 legal memoranda to the division at the same time as filing such
16 documents with the Office of Administrative Law or the court.
17 Upon application to the Office of Administrative Law or to the
18 court wherein the matter is pending, the division shall be permitted
19 to intervene.

20 d. The division shall establish and maintain a confidential,
21 language-accessible helpline staffed by trauma-informed staff,
22 including survivors, to assist workers who have experienced sexual
23 harassment or other unlawful discrimination, by helping the
24 workers find resources, including counseling services, information
25 about relevant laws, policies, and procedures, and by providing
26 assistance in filing complaints with division, other relevant
27 agencies, or in courts of competent jurisdiction.

28 (cf: P.L.2019, c.436, s.5)

29

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

32 17. The Attorney General shall establish rules of practice to
33 govern, expedite and effectuate the foregoing procedure and **[his]**
34 the Attorney General's own actions thereunder. Any complaint filed
35 in the division or in any municipal office pursuant to this act must
36 be so filed within **[180 days]** three years after the alleged act of
37 discrimination or from the discovery of the alleged act of
38 discrimination.

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

40

41 13. Sections 4 and 5 of P.L.1985, c.73 (C.10:5-2.2 and C.10:5-
42 12.1) are repealed.

43

44 14. This act shall take effect of the first day of the third month
45 following enactment.