

Anti-discrimination Laws: New Jersey

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A Q&A guide to state anti-discrimination law for private employers in New Jersey. This Q&A addresses New Jersey laws prohibiting discrimination, harassment and retaliation. Federal, local or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see *Anti-discrimination Laws: State Q&A Tool* (<http://us.practicallaw.com/0-505-9580>)).

OVERVIEW OF STATE ANTI-DISCRIMINATION LAW

1. What employment-related anti-discrimination laws exist in your state? For each anti-discrimination law, please state its citation and title (if applicable) and include information on:

- Which protected classes are covered.
- Which employers are affected (for example, size, type or any exceptions).
- Prohibited employment-related discriminatory conduct.
- Whether managers or supervisors can be held individually liable for discriminatory acts against employees.
- What entity administers and enforces the law.
- What is the statute of limitations for filing a claim.

NEW JERSEY LAW AGAINST DISCRIMINATION: N.J. STAT. ANN. §§ 10:5-1 TO 10:5-49

Protected Classes Covered

The New Jersey Law Against Discrimination (NJLAD) prohibits employment and other discrimination based on:

- Age, including protection against discrimination against younger workers (see, for example, *Bergen Commercial Bank v. Sisler*, 723 A.2d 944 (N.J. 1999)).
- Ancestry.

- Atypical hereditary cellular or blood trait (AHCBT). For example:
 - sickle cell trait;
 - Tay-Sachs trait; or
 - cystic fibrosis.
- Color.
- Creed.
- Disability or handicap.
- Gender identity or expression.
- Genetic information, including refusal to:
 - participate in genetic testing; or
 - provide genetic information.
- Marital status, civil union status and domestic partnership status.
- National origin.
- Nationality.
- Pregnancy.
- Race, including race of the:
 - employee; and
 - individuals affiliated with the employee for personal or business reasons, such as friends, family or colleagues.
- Service in the US armed forces.
- Sex.
- Sexual orientation or affectional orientation.

(N.J. Stat. Ann. §§ 10:5-5 and 10:5-12.)

The NJLAD protects employees, not independent contractors. New Jersey courts, however, may treat an independent contractor as an employee protected by the NJLAD by applying a fact-specific analysis (see, for example, *Pukowsky v. Caruso*, 711 A.2d 398 (N.J. Super. Ct. App. Div. 1998) and *Hoag v. Brown*, 397 935 A.2d 1218 (N.J. Super. Ct. App. Div. 2007)). For more information, see *State Q&A, Independent Contractors: New Jersey* (<http://us.practicallaw.com/6-506-2754>).

Affected Employers

The NJLAD applies to all employers (except federal employers), regardless of size (N.J. Stat. Ann. § 10:5-5(e)).

Although outside the scope of this Q&A, the NJLAD also applies to:

- Labor organizations.
- Employment agencies.

Prohibited Conduct

New Jersey employers cannot:

- Refuse to hire or employ, discharge, or otherwise discriminate against an individual in compensation or other terms, conditions or privileges of employment based on the individual's protected status (*N.J. Stat. Ann. § 10:5-12(a)*).
- Issue employment advertisements containing a preference for or discrimination based on an individual's protected status (*N.J. Admin. Code § 13:11-1.1(a)*).

The NJLAD specifically prohibits employers from treating an employee the employer knows or should know is affected by pregnancy differently or less favorably than a non-pregnant person whose inability to work is similar to that of the pregnant employee (*N.J. Stat. Ann. § 10:5-12(s)*).

However, the NJLAD allows employers to:

- Refuse to hire any person based on sex where sex is a bona fide occupational qualification.
- Refuse to hire any person where it is reasonably necessary to the normal operation of the particular business or enterprise.
- Refuse to hire or promote any person over age 70.

There are additional statutory exceptions for social and fraternal clubs and religious institutions. (*N.J. Stat. Ann. § 10:5-12(a)*.)

Individual Supervisor Liability

Individual supervisors can only be held personally liable for aiding and abetting discrimination by an employer (*N.J. Stat. Ann. § 10:5-12(e)*). Federal courts in New Jersey have issued inconsistent decisions on whether an alleged harasser may be held liable for aiding and abetting his own conduct (see *Seibert v. Quest Diagnostics, Civ. No. 11-304 (KSH) 2012 WL 1044308, at *2 (D.N.J. Mar. 28, 2012)* and *Hurley v. Atlantic City Police Dep't, 174 F.3d 95 (3d. Cir. 1999)*).

Administration and Enforcement

The New Jersey Division on Civil Rights (NJDCR) administers and enforces this law.

Individuals may enforce their rights under the NJLAD by either:

- Bringing an administrative complaint with the NJDCR.
- Filing a complaint in state superior court (or federal court, if there is federal jurisdiction).

(*N.J. Stat. Ann. § 10:5-13*.)

An individual who initiates a claim with the NJDCR may stop that action and initiate a court action instead if the NJDCR has not yet made a final determination on the claim (see *Aldrich v. Manpower Temp. Servs., 650 A.2d 4, 7 (N.J. Super. Ct. App. Div. 1994)*; *Wilson v. Wal-Mart Stores, 729 A.2d 1006 (N.J. 1999)*).

An aggrieved employee may recover remedies necessary to make him whole, including:

- Injunctive relief.

- Reinstatement.
- Back pay.
- Front pay.
- Compensatory damages for:
 - pain;
 - suffering; and
 - humiliation.
- Emotional distress damages.
- Punitive damages.
- Interest.
- Reasonable attorneys' fees and costs.

(*N.J. Stat. Ann. §§ 10:5-3 and 10:5-13*.)

Statute of Limitations

Individuals must file either a:

- Claim with the NJDCR within 180 days of the alleged unlawful employment discrimination (*N.J. Stat. Ann. § 10:5-18*).
- Court action within two years from the date of the alleged unlawful employment discrimination (*Montells v. Haynes, 627 A.2d 654 (N.J. 1993)*).

The Superior Court of New Jersey, Appellate Division declined to ban employment contract provisions that shorten the limitations period for filing claims under the NJLAD (*Rodriguez v. Raymours Furniture Co., 93 A.3d 760, 768-69 (N.J. Super. Ct. App. Div. 2014)*).

NEW JERSEY SMOKING LAW: N.J. STAT. ANN. §§ 34:6B-1 TO 34:6B-4

Protected Classes Covered

The New Jersey Smoking Law (NJSL) prohibits an employer from discriminating against an employee because he does or does not:

- Smoke.
- Use tobacco products.

(*N.J. Stat. Ann. § 34:6B-1*.)

The law, however, does not affect any laws, rules or policies relating to the smoking or the use of tobacco products during the course of employment (*N.J. Stat. Ann. § 34:6B-2*).

Affected Employers

The NJSL applies to all employers in New Jersey, regardless of size (*N.J. Stat. Ann. § 34:6B-1*).

Prohibited Conduct

New Jersey employers cannot refuse to hire or employ, discharge, or take any adverse action against any employee because that person does or does not smoke or use other tobacco products. The only exception is if the employer has a rational basis that is reasonably related to the employment, including the employee's or applicant's responsibilities. Although courts have not yet ruled on when this exception applies, certain employers (such as health care practices that treat lung cancer) could set out a rational basis for not hiring a smoker. (*N.J. Stat. Ann. § 34:6B-1*.)

Individual Supervisor Liability

The NJSL applies to employers only. No court decision has imposed liability on individual supervisors.

Administration and Enforcement

The New Jersey Department of Labor and Workforce Development administers and enforces the New Jersey Smoking Law and may impose civil penalties of up to:

- \$2,000 for the first offense.
- \$5,000 for each subsequent offense.

(*N.J. Stat. Ann. § 34:6B-4.*)

Aggrieved individuals also may file suit in court to obtain:

- Injunctive relief.
- Compensatory and consequential damages.
- Reasonable attorneys' fees and costs.

(*N.J. Stat. Ann. § 34:6B-3(a).*)

Statute of Limitations

Aggrieved individuals bringing a private action must file suit in court within one year after the alleged violation (*N.J. Stat. Ann. § 34:6B-3*).

OVERVIEW OF STATE DISABILITY DISCRIMINATION LAW

2. If there is a state law prohibiting disability discrimination, please provide the following information:

- Who is considered disabled under the law?
- Does the law recognize temporary disabilities?
- Does the law recognize "regarded as" discrimination?
- Does the law protect alcohol and illegal drug users, and if so, to what extent?
- Does the law require reasonable accommodation of persons with disabilities?
- How does a person request reasonable accommodation and how must an employer respond?
- Please provide a brief overview of accommodations that courts in your jurisdiction have found to be reasonable versus not reasonable.

The New Jersey Law Against Discrimination (NJLAD) (*N.J. Stat. Ann. §§ 10:5-1 to 10:5-49*) prohibits disability discrimination.

DISABILITY DEFINITION

The NJLAD covers both physical and mental disabilities, including:

- Physical disability, infirmity, malformation or disfigurement caused by bodily injury, birth defect or illness (including epilepsy and other seizure disorders), such as:
 - any degree of paralysis;
 - amputation;
 - lack of physical coordination;
 - blindness or visual impediment;
 - deafness or hearing impediment;
 - muteness or speech impediment; and
 - physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device.

- Any mental, psychological or developmental disability (including autism or spectrum disorders) resulting from anatomical, psychological, physiological or neurological conditions which:
 - prevents the normal exercise of any bodily or mental functions; or
 - is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques.
- AIDS or HIV infection.

(*N.J. Stat. Ann. § 10:5-5(q).*)

TEMPORARY DISABILITIES

Temporary conditions that meet the definition of disability above may be covered by the NJLAD. The NJLAD does not require that handicaps limit a major life activity or otherwise be severe or immutable (see, for example, *Falla v. City of Passaic*, 146 F.3d 149 (3d Cir. 1998); *Clowes v. Terminix Int'l, Inc.*, 538 A.2d 794 (N.J. 1988)).

"REGARDED AS" DISCRIMINATION

"Regarded as" or "perceived as" claims are recognized under the NJLAD.

ALCOHOL AND ILLEGAL DRUG USERS

Under the NJLAD, disability includes:

- Alcoholism.
- Addiction or dependency on legal or illegal drugs.

(*Clowes*, 538 A.2d at 802; *In re Cahill*, 585 A.2d 977, 979 (N.J. Super. Ct. App. Div. 1991).)

The NJLAD also protects those who have undergone or are undergoing rehabilitative treatment for drug or alcohol addiction (*A.D.P. v. ExxonMobil Research & Eng'g Co.*, 54 A.3d 318 (N.J. Super. Ct. App. Div. 2012)). However, casual or social users of drugs and alcohol are not considered disabled.

DUTY TO PROVIDE REASONABLE ACCOMMODATION

Employers must provide reasonable accommodations to applicants and employees who are disabled, unless the accommodation would impose an undue hardship on the operation of the employer's business (*N.J. Admin. Code § 13:13-2.5(b)*).

Factors considered when determining if the accommodation would impose an undue hardship include:

- Overall size of the employer's business, including the:
 - number of employees;
 - number and type of facilities; and
 - size of budget.
- Types of the employer's operations, including the composition and structure of the employer's workforce.
- Nature and cost of the accommodation needed.
- Extent to which the accommodation would involve waiver of an essential requirement of a job, as opposed to a tangential or non-business necessity requirement.

(*N.J. Admin. Code § 13:13-2.5(b)(3).*)

Once the employer becomes aware of the disability and the employee requests accommodation or assistance for the disability, the employer must participate in the interactive process with the employee to determine if an accommodation can be made. For more information on the interactive process, see *Practice Note, Interactive Process under the ADA* (<http://us.practicallaw.com/5-509-4840>).

REQUESTING REASONABLE ACCOMMODATION

An employer must participate in an interactive process when an employee makes a request for an accommodation. An employer also may have to engage in the interactive process even when the employee has not requested a reasonable accommodation. In addition, an employer must consider making a reasonable accommodation before firing, demoting, or refusing to hire or promote a person with a disability because the disability precludes job performance, regardless of whether the employee requested an accommodation (*N.J. Admin. Code § 13:13-2.5(b)(2)*). For example, if an applicant has a disability that prevents him from working certain hours of the day, the employer must consider whether the applicant can be accommodated by changing the hours or job duties.

However, the NJLAD does not give plaintiffs the right to demand a particular accommodation, and employers have the ultimate discretion to choose between accommodations as long as they are reasonable (*Victor v. State*, 4 A.3d 126, 149-50 (N.J. 2010); *Wojkowiak v. New Jersey Motor Vehicle Comm'n*, 106 A.3d 519, 529-30 (N.J. Super. Ct. App. Div. 2015)).

REASONABLENESS OF ACCOMMODATION

The amended NJLAD provides several examples of reasonable accommodations which should be provided to a worker affected by pregnancy who, based on the advice of her physician, requests them, including:

- Bathroom breaks.
- Breaks for increased water intake.
- Periodic rest.
- Assistance with manual labor.
- Job restructuring or modification.
- Temporary transfers to less strenuous or hazardous work.

(*N.J. Stat. Ann. § 10:5-12(s)*.)

Reasonable accommodations and paid or unpaid leave must be provided to an employee affected by pregnancy on terms that are no less favorable than accommodations or leave provided to other employees not affected by pregnancy but similar in their ability or inability to work. However, an employer is similarly not required to provide the accommodations if it can demonstrate that providing the requested accommodations would impose an undue hardship on its business operations. (*N.J. Stat. Ann. § 10:5-12(s)*.)

Reasonable accommodation is not otherwise defined by the NJLAD and is determined on a case-by-case basis. Examples of reasonable accommodations include:

- Making facilities accessible and usable to disabled individuals.
- Job restructuring, including part-time or modified work schedules.
- Acquiring or modifying equipment or devices.

- Job reassignment.

(*N.J. Admin. Code § 13:13-2.5(b)(1)*.)

Examples of accommodations that New Jersey courts have found reasonable include:

- Offering another available job to a meat cutter with epilepsy to accommodate risks related to his potential seizures (*Jansen v. Food Circus Supermarkets, Inc.*, 541 A.2d 682 (N.J. Super. Ct. App. Div. 1988)).
- Providing mechanical aids and co-worker assistance to accommodate a heart attack patient's limited ability to move heavy objects (*Panettieri v. C.V. Hill Refrigeration*, 388 A.2d 630, 634 (N.J. Super. Ct. App. Div. 1978)).
- Assigning an employee to temporary light-duty work (*Tynan v. Vicinage 13 of the Superior Court*, 798 A.2d 648, 655 (N.J. Super. Ct. App. Div. 2002)).

OVERVIEW OF STATE SEXUAL HARASSMENT LAW

3. If there is a state law prohibiting workplace harassment, please provide the following information:

- Which protected classes are protected from harassment?
- Is sexual harassment prohibited and if so, how is sexual harassment defined?
- If sexual harassment is prohibited, are both quid pro quo and hostile work environment harassment prohibited?
- Is same-sex sexual harassment prohibited?
- Is an employer subject to vicarious liability for sexual harassment by its managers, supervisors or other employees?
- Is an employer subject to vicarious liability for sexual harassment by non-employees?

PROTECTED CLASSES

The New Jersey Law Against Discrimination (NJLAD) prohibits harassment of an employee based on any protected characteristic identified in *Question 1: Protected Classes Covered*.

SEXUAL HARASSMENT

Although not defined in the statute, sexual harassment under the NJLAD has been interpreted consistently with federal law and consists of unwelcome and coercive:

- Sexual advances.
- Requests for sexual favors.
- Verbal or physical conduct of a sexual nature resulting in a change of the terms and conditions of employment.

For more information, see *Practice Note, Harassment* (<http://us.practicallaw.com/9-502-7844>) and *Preventing and Responding to Sexual Harassment Complaints Checklist: Understand the Legal Basics* (<http://us.practicallaw.com/4-500-4326>).

However, an employer is not liable for sexual harassment "if a supervisor is equally crude and vulgar to all employees" (*Lehmann v. Toys 'R' Us, Inc.*, 626 A.2d 445, 462 (N.J. 1993)).

PROHIBITED SEXUAL HARASSMENT TYPES

The NJLAD prohibits quid pro quo and hostile work environment sexual harassment.

SAME-SEX SEXUAL HARASSMENT

The NJLAD prohibits same-sex sexual harassment (*Zalewski v. Overlook Hosp.*, 692 A.2d 131 (N.J. Super. Ct. Law Div. 1996)).

VICARIOUS LIABILITY FOR EMPLOYEE SEXUAL HARASSMENT

Under certain circumstances, employers can be liable for actions by:

- Supervisors (see *Liability and Damages*).
- Non-supervisory employees (see *Liability*).
- Third parties (see *Liability and Vicarious Liability for Non-employee Sexual Harassment*).

Liability

An employer is liable for the actions of its supervisors within the scope of their employment.

To establish employer liability where someone other than the employer or its supervisors within the scope of their employment perpetrated the harassment, such as non-supervisory employees and third parties, the complaining employee must demonstrate that the employer:

- Knew or should have known about the conduct.
- Had control over the harasser.
- Failed to take prompt and appropriate corrective action to stop or prevent the harassment.

(See, for example, *Blakey v. Cont'l Airlines, Inc.*, 751 A.2d 538 (N.J. 2000).)

The New Jersey Supreme Court adopted the US Supreme Court's Ellerth/Faragher analysis, which permits the employer in a hostile work environment sexual harassment case to assert as an affirmative defense to vicarious liability that:

- It exercised reasonable care to prevent and correct promptly any sexually harassing behavior.
- The plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer to avoid harm otherwise.
- The employer has not taken an adverse tangible employment action against the plaintiff employee.

(*Aguas v. State*, 107 A.3d 1250, 1253 (N.J. 2015).)

Damages

The New Jersey Supreme Court has established three levels of vicarious liability for damages where supervisors created a hostile work environment. An employer is:

- Strictly liable for equitable relief.
- Liable for compensatory damages for actions taken within or outside the scope of a supervisor's employment if:
 - the employer intended the conduct;
 - the employer was negligent or reckless;
 - the conduct violated a nondelegable duty of the employer; or

- the supervisor purported to act or speak on behalf of the employer and there was reliance on apparent authority or he was aided in the harassment by the existence of the agency relationship.
- Liable for punitive damages only if the employee demonstrates actual participation by upper management or willful indifference.

(*Lehmann*, 626 A.2d at 445.)

New Jersey courts have held that an employer's failure to establish and enforce an anti-harassment policy might constitute negligence, but an employer is shielded from liability for damages if it does all of the following:

- Establishes, periodically publishes and enforces an anti-harassment policy, including an effective and practical grievance process for employees to use (for a sample anti-harassment policy, see *Standard Document, Anti-harassment Policy* (<http://us.practicallaw.com/7-501-6926>)).
- Provides training for workers, supervisors and managers concerning how to recognize and eradicate unlawful harassment.
- Can demonstrate that it has taken effective remedial measures to stop the harassment when it is reported or discovered.

(See, for example, *Gaines v. Bellino*, 801 A.2d 322, 323 (N.J. 2002).)

VICARIOUS LIABILITY FOR NON-EMPLOYEE SEXUAL HARASSMENT

An employer can be found liable for sexual harassment of an employee by a non-employee if the employer did all of the following:

- Knew or should have known of the harassment.
- Had control over the harasser.
- Failed to take immediate and appropriate corrective action.

(See, for example, *Woods-Pirozzi v. Nabisco Foods*, 675 A.2d 684, 692 (N.J. Super. Ct. App. Div. 1996).)

OVERVIEW OF STATE ANTI-RETALIATION LAW

4. Is there a state law prohibiting retaliation in your jurisdiction? If so, please include information on:

- What specific acts are protected, if any.
- How is retaliation defined?
- Whether an employer can be subject to vicarious liability for retaliatory conduct by an employee.
- Whether filing a workers' compensation claim in your jurisdiction is protected from retaliation.

Retaliation is prohibited by:

- The New Jersey Law Against Discrimination (NJLAD) (*N.J. Stat. Ann. §§ 10:5-1 to 10:5-49*).
- The New Jersey Conscientious Employee Protection Act (NJCEPA) (*N.J. Stat. Ann. §§ 34:19-1 to 34:19-14*).
- The New Jersey Family Leave Act (NJFLA) (*N.J. Stat. Ann. §§ 34:11B-1 to 34:11B-16*).
- The New Jersey Workers' Compensation Law (NJWCL) (*N.J. Stat. Ann. §§ 34:15-1 to 34:15-142*).

PROTECTED ACTS

New Jersey Law Against Discrimination

New Jersey employers cannot retaliate against any person because that person either:

- Opposed any practices or acts forbidden under the NJLAD.
- Filed a complaint, testified or assisted in any proceeding under the NJLAD.

(*N.J. Stat. Ann. § 10:5-12(d).*)

The NJLAD also makes it unlawful to coerce, intimidate, threaten or interfere with any person:

- In the exercise or enjoyment of any right under the NJLAD.
- Because of that person's aiding or encouraging another person in the exercise or enjoyment of any right under the NJLAD.

(*N.J. Stat. Ann. § 10:5-12(d).*)

The NJLAD also prohibits employers from retaliating against an employee for asking another current or former employee for certain information to assist in investigating or taking legal action against potentially discriminatory treatment in any of the following:

- Pay.
- Compensation.
- Bonuses.
- Benefits.

(*N.J. Stat. Ann. § 10:5-12(r).*)

Requests for the following information are therefore protected against retaliation, whether or not the information was actually provided:

- Job title.
- Occupational category and rate of compensation, including benefits.
- Gender.
- Race.
- Ethnicity.
- Military status.
- National origin.

(*N.J. Stat. Ann. § 10:5-12(r).*)

Nothing in this section of the NJLAD should be construed as requiring an employee to provide this information about himself (*N.J. Stat. Ann. § 10:5-12(r).*)

New Jersey Conscientious Employee Protection Act

The NJCEPA prohibits retaliation because the employee:

- Discloses or threatens to disclose to a supervisor or a public body any activity, policy or practice of the employer, or another employer with whom there is a business relationship, that the employee reasonably believes is:
 - in violation of a law or regulation; or
 - fraudulent or criminal.
- Provides information to or testifies before any public body conducting an investigation, hearing or inquiry into any violation of law.

- Objects to, or refuses to participate in, any activity, policy or practice which the employee reasonably believes:
 - constitutes a violation of law;
 - is fraudulent or criminal; or
 - is incompatible with a clear mandate of public policy concerning the public health, safety or welfare, or protection of the environment.

(*N.J. Stat. Ann. § 34:19-3.*)

The Supreme Court of New Jersey held that a health care worker could not base a claim under the NJCEPA on an employer's alleged violations of standards set out in a professional code of ethics, the employee handbook and the employer's statement of patient rights. None of those policy documents serve as an authority recognized by Section 34:19-3(a)(1), (c)(1) or (c)(3) of the New Jersey Statutes. (*Hitesman v. Bridgewater, Inc.*, 93 A.3d 306 (N.J. 2014)).

The New Jersey Appellate Division extended the NJCEPA to protect as whistleblowers "watchdog" employees whose core job function is to monitor and report conduct (*Lippman v. Ethicon*, 75 A.3d 432 (N.J. Super. Ct. App. Div. 2013)). The Lippman court expressly defined "watchdog" employees as those whose job duties put them in the best position to know:

- The relevant standard of care.
- When an employer's proposed plan or course of action would violate or materially deviate from that standard of care.

(*Lippman*, 75 A.3d at 451.)

To establish a case under the NJCEPA, a "watchdog" employee must show that:

- He reasonably believed that the employer's conduct violated either:
 - a law;
 - government regulation; or
 - clear mandate of public policy.
- He refused to participate or objected to the unlawful conduct and advocated compliance with the relevant legal standard to either:
 - the employer; or
 - those designated by the employer with the authority or responsibility to comply.
- He suffered an adverse employment action.
- There was a causal connection between his activities and the adverse employment action.

(*Lippman*, 75 A.3d at 451.)

New Jersey employees aggrieved by a violation of the NJCEPA are entitled to punitive damages only if the jury applying the clear and convincing evidence standard determines the wrongful conduct was:

- Committed by employees who were clearly members of upper management.
- Was "especially egregious", constituting actual participation or willful indifference to the plaintiff's rights under the NJCEPA.

(*Longo v. Pleasure Prods.*, 71 A.3d 775, 784-85 (2013).)

New Jersey Family Leave Act

The NJFLA prohibits employers from discharging or discriminating against employees:

- For opposing conduct prohibited by the NJFLA.
- Because the individual has filed a charge, instituted a proceeding, or given testimony or information related to an investigation or proceeding under the NJFLA.

(*N.J. Stat. Ann. § 34:11B-9.*)

New Jersey Workers' Compensation Law

See *Workers' Compensation Claims*.

DEFINING RETALIATION

Under the NJLAD, retaliation means "to take reprisals against" an employee because he:

- Opposed any practice or act forbidden under the NJLAD.
- Filed a complaint, testified at or assisted in any proceeding under the NJLAD.

The NJLAD prohibits adverse actions:

- Motivated by a desire to retaliate against an employee for reporting or complaining about conduct that the person believes is unlawful.
- Designed to discourage people from:
 - giving testimony; or
 - objecting to or reporting discrimination.

(*N.J. Stat. Ann. § 10:5-12(d).*)

VICARIOUS LIABILITY

- New Jersey courts apply a three-level standard to determine employer liability for retaliation:
- Strict liability must apply for equitable relief.
- Agency principles including negligence must be applied to determine if an employer is liable for compensatory damages that exceed equitable relief.
- A higher level of culpability (more than negligence) is required for punitive damages.

(*Abbamont v. Piscataway Twp. Bd. of Educ.*, 650 A.2d 958, 963 (N.J. 1994).)

WORKERS' COMPENSATION CLAIMS

New Jersey employers cannot discharge or retaliate in any way against an employee because the employee either:

- Filed or attempted to file a workers' compensation claim.
- Testified at a workers' compensation hearing.

(*N.J. Stat. Ann. § 34:15-39.1.*)

For more information, see *Practice Note, Workers' Compensation: Common Questions* (<http://us.practicallaw.com/0-504-9497>).

STATE PROTECTED CLASSES PARAGRAPH

5. Please provide a list of all state-specific protected classes in paragraph form that could be inserted into an employment-related agreement or policy in your jurisdiction.

Age, ancestry, atypical hereditary cellular or blood trait, service in the US armed forces, color, creed, disability or handicap, gender identity or expression, genetic information, marital status, civil union status, domestic partnership status, national origin, nationality, pregnancy, race, sex, sexual orientation or affectional orientation.

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