

New Jersey

Employment Law Workbook Addendum

(Update on legislation enacted from Jan. 1, 2015- Dec. 31, 2016)

Topics

I. Discrimination

No new laws or regulations enacted in 2015 or 2016.

II. Pre-Employment Inquiry Guidelines

Criminal Background Inquiries

The New Jersey Opportunity to Compete Act (OTCA) prohibits covered employers from requiring a job applicant to complete any employment application that makes any inquiries regarding an applicant's criminal record during the initial employment application process. The new rules clarify terms and provide additional guidance on the provisions of the OTCA.

Covered Employers and Individuals

A covered employer is any person, company, corporation, firm, labor organization, or association that has 15 or more employees over 20 calendar weeks and does business, employs persons or takes applications for employment within the State of New Jersey. The new rules clarify that for purposes of calculating the 15-employee threshold, employees may work inside or outside of New Jersey.

The OTCA protects applicants and employees; apprentices and interns are included within the definition of employee. The new rules provide definitions for apprentice and intern. An apprentice must be registered and in good standing in an apprenticeship program approved or certified by the Office of Apprenticeship within the U.S. Department of Labor. An intern is a student or recent graduate who is working as a trainee to gain practical experience in an occupation.

Timeframe for Prohibited Inquiries

Covered employers are prohibited from inquiring into an applicant's criminal history until after the initial employment application process, which concludes when an employer has conducted a first interview. The new rules define "interview" as any live, direct contact by the employer with the applicant, whether in person, by telephone, or by video conferencing, to discuss the employment being sought or the applicant's qualifications. However, an exchange of emails or the completion of a written or electronic questionnaire does not constitute an interview.

Multistate Employers

The new rules provide guidance for employers that do business both in New Jersey and at least one other state. Employers with operations in more than one state are not prohibited from including an inquiry regarding an applicant's criminal record on a multistate employment application, so long as the application includes a conspicuous disclaimer for New Jersey applicants. Immediately preceding the criminal record inquiry, the application must instruct the applicant not to answer the question if the job position is physically located in whole or substantial part in New Jersey.

Applicable Penalties

The new rules set forth enforcement guidance for imposing penalties on employers for violations of the OTCA. The OTCA authorizes the Department of Labor and Workforce Development to assess penalties of up to \$10,000, depending on whether the violation is a first or subsequent violation. The new rules contain guidelines for factors the Department must consider in determining the applicable penalty, including the seriousness of the violation as well as the employer's size, good faith, and any previous history of violations.

N.J.A.C. 12:68-1.5 (Effective Date 12/07/2015).

III. Family and Medical Leave

No new laws or regulations enacted in 2015 or 2016.

IV. Wage and Hour Laws

A. Notice of Minimum Wage Increase

New Jersey's minimum wage law requires an increase in the minimum wage each year on September 30th if the consumer price index increases. Due to a 1.54% increase in the CPI for the period from August 2015 to August 2016, the state will increase its minimum wage from \$8.38 to \$8.44 per hour beginning January 1, 2017. Minimum wage information is required to be posted in a conspicuous location in each workplace.

N.J.A.C. 12:56-3.1 (Effective Date 01/01/2017).

B. Wage Withholding Orders

The federal Uniform Interstate Family Support Act (UIFSA) ensures that family support orders are enforced in each of the 50 states and that an obligor cannot escape his or her duty to pay support by moving out of state. New Jersey previously incorporated the UIFSA into its statutes, and with this legislation amends state law to comply with the mandates of the federal Preventing Sex Trafficking and Strengthening Families Act of 2014.

Of relevance to employers, the new version of the law instructs employers on withholding wages in compliance with income withholding orders.

When an employer receives an income withholding order from another state, the employer must treat the order as though it were issued by a New Jersey court. The employer must:

- provide a copy of the order to the obligor-employee; and
- withhold the required amounts from the obligor-employee's pay and distribute the funds as directed in the withholding order.

The employer must comply with the law of the state of the obligor-employee's principal place of employment on these items:

- the amount of service fee the employer may withhold;
- the maximum amount the employer may withhold;
- the time in which the employer must implement the withholding order and forward the child support payment; and

- the priority of withholding of two or more income withholding orders from different states for the same obligor-employee.

An employer that complies with an income withholding order cannot be held liable to an individual or agency regarding the withholding. However, if an employer willfully violates a valid income withholding order from another state, the employer is subject to the penalties that New Jersey imposes for noncompliance with New Jersey orders.

2016 N.J. ALS 1 (Effective Date 04/01/2016).

V. Drug Testing

No new laws or regulations enacted in 2015 or 2016.

VI. Noncompete and Other Employment Agreements

No new laws or regulations enacted in 2015 or 2016.

VII. Workplace Safety

No new laws or regulations enacted in 2015 or 2016.

VIII. Workers' Compensation

No new laws or regulations enacted in 2015 or 2016.

IX. Miscellaneous

A. Self-Funded Multiple Employer Welfare Arrangement Regulation Act

New Jersey has amended the Self-Funded Multiple Employer Welfare Arrangement Regulation Act. A self-funded multiple employer welfare arrangement is a self-funded or partially self-funded multiple employer welfare arrangement that provides for the health benefits plans for two or more employers who each have two or more employees. At least one of the employer members must be domiciled in New Jersey or have its principal headquarters or principal administrative office located in New Jersey.

The amendment changes the definition of "large employer" from a member employer with more than 100 eligible employees to an employer with more than 50 eligible employees, and changes the definition of "small employer" to an employer who employs an average of at least two but not more than 50 eligible employees. The amendment provides that a large employer participating in a multiple employer welfare arrangement is not required to adhere to the plan or design elements, or any required coverage offerings applicable to small employers, including but not limited to deductibles, co-payments, and co-insurance amounts.

The amendment requires that large employer members of a multiple employer welfare arrangement offer all health benefits mandated by New Jersey law effective October 1, 2014. However, employers participating in a multiple employer welfare arrangement do not have to offer any new or additional health benefits required by New Jersey law that went into effect after October 1, 2014. The new law also provides that large employer members may calculate program rates based on classification factors such as claims experience and utilization, age, gender, tobacco use, geography, and specific certified underwriting adjustments.

The amendment eliminates the requirement that the self-funded multiple employer board of trustees consist of one designee selected by each member employer in addition to at least one independent trustee chosen by majority vote of the members. Instead, the board of trustees must consist of at least one trustee who is a non-participating independent trustee chosen by a majority vote of the trustees. The board of trustees is also no longer required to meet on a quarterly basis.

The amendment requires that the self-funded multiple employer welfare arrangement maintain a website to make the required filings and information concerning its governance and financial performance publicly available for at least five years after reporting. The website must also indicate the status of a deposit that is required to be continuously maintained with a financial institution. Additionally, the amendment provides that a self-funded multiple employer welfare arrangement may provide a health and wellness program and an internet-based system for the administration, billing, and claims processing of its benefits.

N.J. Stat. § 17B:27C-1 (Effective Date 01/01/2016).

B UI Employer Contribution Reports

New Jersey law provides that the Division of Revenue is responsible for all revenue management, including processing employers' unemployment contribution receipts and reports. Under prior law, employers submitted unemployment contributions to the Department of Labor and Workforce Development (DLWD). Employers currently remit quarterly contributions to the Division of Revenue. However, in 2013, the State Auditor found that the DLWD was continuing to collect some unemployment contributions and hand-delivering them to the Division of Revenue. This amendment clarifies that all payments, reports and receipts from employers related to the unemployment compensation program must be submitted or remitted directly to the Division of Revenue in the Department of the Treasury, referred to as the Division of Revenue and Enterprise Services (DORES).

N.J. Stat. § 43:21-14 (Effective Date 11/09/2015).