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Federal Court Rules That NJ's Equal Pay Act May Not Be Applied Retroactively

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In a January 15, 2019 decision, a federal court judge ruled that New Jersey's Diane B. Allen Equal Pay Act (EPA) may not be applied retroactively. The U.S. District Court for the District of New Jersey, in *Perrotto v. Morgan Advanced Materials, PLC*, dismissed two counts which were brought under the EPA, but which were predicated upon facts that predated the statute's enactment.

The EPA, which was enacted on April 25, 2018 and effective as of July 1, 2018, expanded the New Jersey Law Against Discrimination (NJLAD) by guaranteeing equal pay for "substantially similar" work and by significantly augmenting damages imposed on violators. Specifically, the amendment imposed a six-year "look back" period, provided that the discrimination is continuous. This represents a significant expansion of the two-year statute of limitations that applies to other claims brought under the NJLAD, and the two-year look back period under the federal Equal Pay Act.

The EPA was silent as to its prospective or retroactive application, and the *Perrotto* case presented the Court with an ideal opportunity to resolve this lingering issue judicially.

In *Perrotto*, the plaintiff, a female controller and human resources professional employed by the defendant, was terminated on April 5, 2018, before the EPA was enacted. In her complaint, Perrotto asserted, among other claims, discriminatory gender-based disparity in pay and retaliation counts, both based on violations of the EPA. The defendant argued that the EPA is not retroactive and filed a motion to dismiss the two EPA counts for failure to state claim, as the EPA was not enacted when the relevant facts occurred.

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The Court's analysis started with the basic postulate of statutory construction which favors the prospective application of new legislation due to principles of fairness and due process. The Court further identified three exceptions to the rule of prospective application: (1) when the legislative intent that the statute be applied retroactively is either explicit in the text or it can be implied; (2) when the enactment is intended to have curative effect; or (3) when the parties' expectations justify retroactive application.

In determining whether any of the exceptions applied in this case, the Court noted that as the legislators made the EPA effective more than two months after its enactment, the implied intent was that it be applied prospectively. The Court further reasoned that the EPA dealt with an entirely new concept – pay equity – and thus could not be curative in nature. Finally, the Court held that the parties could not have relied upon a statute that was not enacted at the time the relevant facts occurred, rejecting the argument that the pendency of the bill itself is sufficient to shape and justify the expectations of the parties.

With *Perrotto* settling the issue in favor of the prospective application of the statute, plaintiffs who file cases under the EPA after July 1, 2024 will be able to go back the full six-year period. In the interim, the look-back period will gradually increase. It is also significant that the EPA now allows for treble damages, thus further augmenting possible damages.

In light of the breadth of changes under the EPA – and the significant penalties that threaten employers who continue to violate New Jersey's equal pay mandate – it is imperative that employers undertake a careful review of their pay practices and related policies. Please contact the author of this Alert, **Maja M. Obradovic**, to learn more about the steps employers should take in this regard.