

# Client Alert **Employment & Labor**

## *Groundbreaking Legislation on Both Sides of the Hudson – Latest NJ and NYC Employment Law Developments*

### **NJ Employee Protection from Retaliation Related to Pay Equity**

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On August 28, 2013, Governor Chris Christie signed A-2648, which adds a new non-retaliation pay equity provision to the New Jersey Law Against Discrimination (“LAD”). The amendment to the LAD prohibits retaliation against any employee who requests from a current or former co-worker information regarding compensation, benefits or occupational category or the gender, race, ethnicity, military status or national origin of any employee or former employee, if the purpose of the request is to assist in investigating or taking legal action regarding a potential discriminatory pay practice occurring in the workplace.

The amendment clarifies that an employer is not required to release protected information in response to an employee’s request, but only prohibits reprisals against any employee who makes such a request. The amendment takes effect immediately.

NJ employers should be cautious when they learn of requests for or discussions regarding employee compensation and benefits. Note that the federal National Labor Relations Board also considers a policy or practice that prevents or discourages employees from discussing the terms and conditions of employment, including compensation, to be a violation of the National Labor Relations Act.

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## **NYC Council Approves Reasonable Accommodation Requirement for Pregnant Employees**

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The New York City Human Rights Law (“NYCHRL”), one of the broadest anti-discrimination ordinances in the country, will become significantly broader as a result of a recently passed bill, which expands the protections that the NYCHRL provides for pregnant employees. The bill was passed by the New York City Council on September 24 and has been sent to the Mayor for his signature. Even if the Mayor vetoes the bill it will likely go into effect because the City Council passed the legislation unanimously.

Employers with four or more employees will be prohibited from discriminating against pregnant employees, or employees who have a medical condition related to pregnancy or childbirth, and will be required to provide a reasonable accommodation to such workers. The bill explains that a reasonable accommodation may include “bathroom breaks, leave for a period of disability arising from childbirth, breaks to facilitate increased water intake, periodic rest for those who stand for long periods of time, and assistance with manual labor, among other things.”

The proposed law will apply to smaller employers and will provide significantly more protection than is currently available under the federal Pregnancy Discrimination Act and the New York State Human Rights Law, which do not require employers to provide accommodations for medical conditions relating to pregnancy or childbirth.

Employers are not required to provide accommodations that would cause an undue hardship on the employer’s business. Employers will be required to provide written notice of these new accommodation rights. Employees who believe that their employers have violated the law will have the right to elect either to file an administrative charge of discrimination with the NYC Commission on Human Rights or commence a civil action in court.

Once the new law takes effect, New York City-based employers should re-examine existing policies pertaining to the rights afforded pregnant employees.

## **NJ Employee and Job Applicant Password Protection**

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On August 28, 2013, Governor Chris Christie signed A-2878, a law that prevents NJ-based employers from requiring, or requesting, a current or prospective employee to provide or disclose a user name or password to his or her personal account or provide the employer with access to same.

With a few exceptions, the new law applies to all New Jersey employers, regardless of size.

The new law also prohibits retaliation or discrimination against employees who:

- (i) refuse to provide access to a personal account,
- (ii) report an alleged violation to the Commissioner of Labor and Workforce Development (“Commissioner”),
- (iii) testify, assist, or participate in any investigation, proceeding or action concerning alleged violations of the act, or
- (iv) or otherwise oppose a violation of the law.

An earlier draft of A-2878 incorporated a prohibition on employers from inquiring whether employees or applicants have a social media account, but Governor Christie struck that language as part of his conditional veto. Significantly, the new law does *not* prevent employers from performing their own online search to determine if a prospective or current employee is on a social media.

The new law, which takes effect on December 1, 2013, authorizes aggrieved persons to report violations to the Commissioner. Unlike the previously vetoed version of the bill, the new law does not create a right by such persons to commence a civil action for damages against the offending employer.

New Jersey joins California, Delaware, and more than 10 other states which have enacted legislation preventing employers from requesting social media information. Similar legislation is currently pending in the State of New York.

In view of the new statute, New Jersey employers should re-examine their employment and pre-employment practices concerning requests for disclosure/access to a personal social media account.

### **NJ Employer Penalties for Failing to Timely Respond to Unemployment Insurance Requests**

Effective August 19, 2013, the New Jersey Unemployment Compensation Law was amended to redefine the provisions penalizing employers who fail to timely respond to requests for information from the Division of Unemployment and Temporary Disability Insurance (the “Division”).

An employer's unemployment insurance account will not be relieved of charges related to a fraudulent benefit payment if the Division determines that the employer (1) is at fault for an erroneous payment because the employer failed to respond in a timely or adequate manner to a request from the Division for information that relates to a claim, and (2) the employer engaged in a "pattern of failing to respond."

### Additional New Jersey Updates

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- » On the horizon is a potential sick leave law in New Jersey. The proposed law would provide even more protections than the recently passed New York City sick leave law, which we described in our [July 2013 Client Alert](#). We will continue to monitor the status of the proposed bill.
- » Updating our July 2013 Client Alert, [here](#) is a link to the New Jersey Department of Labor's recently issued notice, which employers are required to post under the New Jersey Security and Financial Employment Act.

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If you have any questions regarding any of the foregoing developments or would like assistance or guidance on implementing changes to policies, notices, forms or employment contracts impacted by same, please contact any of the following Sills Cummis & Gross attorneys.

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