

# Governor Modifies New Jersey Law Against Discrimination (NJLAD) to Extend Protection against Age Discrimination for Older Workers

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The NJLAD is a New Jersey law that protects employees of New Jersey employers, from the private sector and state and local government, from [discrimination](#). While the NJLAD has always prohibited age-based discrimination in employment, a new amendment signed into law on October 5, 2021 by Governor Phil Murphy significantly expands protection for older workers. This legislation, which had previously passed both the State Senate and State Assembly unanimously, reflects the realities of today's aging workforce. Employees now remain in the workforce much longer than past generations.

## What does the NJLAD Amendment Mean for Employers?

The NJLAD applies to businesses of all sizes, regardless of the number of employees. For employers, compliance with the new discrimination law will be critical. Employers must not only understand the law and accordingly update policies, handbooks, and training, but should also anticipate an increase in NJLAD age discrimination claims that may arise from their employment decisions concerning older workers. Moreover, the new law removes certain protections from liability and increases the remedies available to workers filing claims, as noted below.

## How has the NJLAD Changed with Respect to Age-Based Discrimination?

Several changes in this law serve to eliminate previously existing provisions that had permitted certain age-focused actions. As a result:

- Employers are not permitted to refuse to employ or promote individuals over 70 years old.

- New Jersey governmental employers are no longer permitted to require mandatory retirement after attaining a particular age by merely showing that such a retirement age had a “manifest relationship to the particular employment in question,” but instead can do so only if they are able to affirmatively demonstrate that an employee is unable to adequately perform the duties of their employment. This revised standard focuses on the employee’s actual ability to perform their job responsibilities, rather than requiring retirement based on any preconceived notions of the impact that age might have on the ability to perform the job.
- Public or private institutions of higher education cannot require tenured employees to retire at the age of 70 years.

## **Employers Need to Update Employment Policies to Reflect New Law**

Any change to employment laws should trigger an employer to review all employment policies in place that include language about a mandatory retirement age, or any other age-related policies that might be affected by the changes in the law. Handbooks and policy updates may be required to ensure compliance with the new law.

## **Employers Need to be Aware of Expanded Remedies and Damages Available to Employees**

In addition, the law addresses an issue that had limited the remedies available to employees filing forced retirement claims. In the past, workers were restricted to filing a complaint with the Attorney General, with relief limited to reinstatement with back pay and interest.

The new law provides that any employee who brings a claim of forced retirement because of age now has the right to seek “all of the remedies provided by any applicable law,” which could potentially also include other forms of injunctive relief; front pay; compensatory damages; punitive damages; and attorneys’ fees. As such, employers should anticipate significantly expanded damages sought in claims brought by employees.

In summary, the new law against discrimination requires employers to carefully consider their employment decisions relating to older employees, particularly those over the age of 70. It is important

for employers, HR departments, and supervisors/managers to fully understand the new law, and to be trained on its implications. Please contact us if you would like to discuss the new law and your [employment policies](#) with Einhorn Barbarito's [corporate and employment lawyers](#).