

# ASSEMBLY, No. 2443

## STATE OF NEW JERSEY 221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

**Sponsored by:**

**Assemblywoman ANNETTE QUIJANO**

**District 20 (Union)**

**Assemblyman REGINALD W. ATKINS**

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**SYNOPSIS**

Concerns unlawful discrimination and harassment.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning unlawful discrimination and harassment and  
2 supplementing and amending P.L.1945, c.169 and amending  
3 P.L.2019, c.39.  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

8 1. (New section) Legislative findings and declarations  
9 concerning unlawful harassment.

10 The Legislature finds and declares:

11 a. The purpose of this section is to affirm that the right to be  
12 free from discrimination in employment, housing, business  
13 relationships, and places of public accommodation includes the  
14 right to be free from unlawful harassment based on any  
15 characteristic protected by the “Law Against Discrimination.”

16 b. Among the goals of this act is to codify the standard for  
17 hostile environment harassment claims set forth in Lehmann v.  
18 Toys R Us, Inc., 132 N.J. 587 (1993); Taylor v. Metzger, 152 N.J.  
19 490 (1998); L.W. v. Toms River Regional Schools Board of  
20 Education, 189 N.J. 381 (2007); and Justice Ginsburg’s concurrence  
21 in Harris v. Forklift Systems, 510 U.S. 17, 26 (1993) (Ginsburg, J.,  
22 concurring).

23 c. It is the further intent of the Legislature to disavow  
24 interpretations of the standard for hostile environment harassment  
25 claims under the “Law Against Discrimination” found in decisions  
26 such as Clayton v. City of Atlantic City, 538 Fed. Appx. 124, 129  
27 (3d Cir. 2013), in which the court held that an incident in which a  
28 supervisor intentionally grabbed an employee’s buttocks did not  
29 rise to the level of severe or pervasive conduct; Godfrey v.  
30 Princeton Theological Seminary, 196 N.J. 178, 198 (2008), in  
31 which the court held that incidents must be described “in sterile  
32 terms, stripped of the overlay of (the plaintiffs’) subjective  
33 reactions to these interactions,” because, in the court’s view, those  
34 reactions were not relevant to “the determination of whether the  
35 conduct is severe or pervasive,” and held that the alleged harasser’s  
36 “repeated and unwelcome behavior was one of the socially  
37 uncomfortable situations that many women encounter in the course  
38 of their lives when someone in whom they are not interested  
39 persists in trying to persuade them otherwise.”; id. at 201 (harassing  
40 conduct not directed at or witnessed by plaintiff cannot factor into  
41 analysis of a hostile work environment claim); and Anastasia v.  
42 Cushman Wakefield, 455 Fed. Appx. 236, 237-240 (3d Cir. 2011),  
43 where the court found that no reasonable jury could find severe or  
44 pervasive harassment where: the plaintiff’s superior informed her  
45 that “he was romantically attracted to her and had been for years,”

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 and then, over that day and the following day, followed her to the  
2 parking lot and gently grabbed her arm, asked her for a photograph  
3 of her and her new boyfriend, and “concocted a pretext to have (the  
4 plaintiff) meet him alone in a break room”; the plaintiff  
5 immediately took a temporary leave of absence, while her superior  
6 continued to call and send emails and text messages to her, despite  
7 her repeated statements that his further contact was unwanted; and  
8 the plaintiff refused to return to work when her employer refused to  
9 create an arrangement under which she would not ultimately have to  
10 report to the alleged harasser, and her employer terminated her  
11 while she was out on leave, but treated the action as a voluntary  
12 resignation.

13 d. It is not the intent of the Legislature, by enacting this law, to  
14 disavow, repudiate or supplant any other established doctrines  
15 regarding sexual harassment or unlawful harassment, including: (1)  
16 quid pro quo sexual harassment, which exists separately from  
17 hostile environment sexual harassment; or (2) business relationship  
18 liability, consistent with subsection 1. of section 11 of  
19 P.L.1945, c.169 (C.10:5-12) and J.T.’s Tire Service, Inc. v. United  
20 Rentals North America, Inc., 411 N.J. Super. 236 (App. Div. 2010).

21

22 2. (New section) Unlawful harassment; standard;  
23 interpretation.

24 a. It shall be unlawful discrimination in violation of  
25 P.L.1945, c.169 (C.10:5-1 et seq.) for a person or entity to subject  
26 an individual, because of sex or any other characteristic of the  
27 individual protected under section 11 of P.L.1945, c.169 (C.10:5-  
28 12), to unlawful harassment.

29 b. In order to state a claim for unlawful harassment based on a  
30 hostile work environment under P.L.1945, c.169 (C.10:5-1 et seq.),  
31 a complainant shall show conduct that occurred because of sex or  
32 any other characteristic of the individual protected under section 11  
33 of P.L.1945, c.169 (C.10:5-12), which a reasonable person in the  
34 complainant’s protected class would find to be sufficiently severe  
35 or pervasive so as to alter the conditions of employment and create  
36 an intimidating, hostile, or offensive work environment. When a  
37 violation of this subsection occurs in a workplace, it shall also be an  
38 unlawful employment practice.

39 (1) The following standards shall guide the determination of  
40 whether a violation of this subsection has occurred:

41 (a) A determination of whether the harassing conduct was  
42 sufficiently severe or pervasive to create an intimidating, hostile, or  
43 offensive work environment shall be based upon the totality of the  
44 circumstances. In evaluating the severity or pervasiveness of the  
45 alleged harassing conduct, the cumulative effect of all incidents of  
46 harassing conduct shall be considered as a whole rather than  
47 considering individual incidents in isolation, provided, however,

1 that a single incident of harassing conduct may be sufficiently  
2 severe to create a triable issue of fact regarding the existence of an  
3 intimidating, hostile, or offensive work environment. De minimis  
4 incidents such as petty slights or trivial inconveniences shall not by  
5 themselves be actionable under this act, provided however that a  
6 court shall consider all evidence, including de minimis or isolated  
7 incidents, when evaluating the totality of the circumstances.

8 (b) A determination of whether harassing conduct is sufficiently  
9 severe or pervasive so as to create an intimidating, hostile, or  
10 offensive work environment shall include a consideration of  
11 whether a reasonable person in complainant's protected class would  
12 consider the conduct to be sufficiently severe or pervasive to alter  
13 the conditions of employment, provided that a complainant's  
14 subjective responses to the harassing conduct shall be considered as  
15 part of the totality of the circumstances that are relevant to whether  
16 a reasonable person belonging to the same protected class would  
17 consider the conduct to be sufficiently severe or pervasive to alter  
18 the conditions of employment. In addition, the complainant's  
19 knowledge of harassment directed to others may be relevant to  
20 evaluating whether a hostile work environment exists, whether or  
21 not the complainant witnessed the harassing conduct.

22 (c) For purposes of this section, harassing conduct may include  
23 but not be limited to physical contact or gestures, threats, abusive or  
24 offensive language, damage to or interference with personal  
25 property, or offensive written or verbal communications or  
26 comments, whether such conduct is of a sexual nature or otherwise.  
27 Harassing conduct shall not be construed to require physical contact  
28 to qualify as severe or pervasive.

29 (d) It shall not be necessary to demonstrate loss of tangible job  
30 benefits to establish a violation of this subsection, nor shall it be  
31 necessary for the complainant to prove that the complainant's  
32 tangible productivity declined because of the harassing conduct.

33 (2) The following standards shall be applicable for assessing  
34 employer liability for hostile work environment harassment  
35 pursuant to a negligence theory under P.L.1945, c.169 (C.10:5-1 et  
36 seq.):

37 (a) An employer shall be liable for the unlawful harassment if  
38 the entity, or its agents or supervisors, knew or should have known  
39 of the harassing conduct and failed to take appropriate preventive or  
40 corrective action.

41 (b) An employer may be held responsible for the harassing  
42 conduct of non-employees if the entity, or its agents or supervisors,  
43 knew or should have known of the conduct and failed to take  
44 appropriate preventive or corrective action. However, in reviewing  
45 cases involving the acts of non-employees, consideration shall be  
46 given to the extent of the entity's control and any other  
47 responsibility that the entity may have with respect to the conduct  
48 of those non-employees.

1 (c) Nothing in this subsection shall be deemed to in any way  
2 alter the standard for imposing direct or vicarious liability on the  
3 employer for the harassing acts of supervisors or superiors.

4 (3) For purposes of claims brought under this subsection  
5 alleging that an employer committed a violation of this section, the  
6 definition of “employer” shall include: any person who employs an  
7 individual to perform domestic work in their private residence; who  
8 employs an individual to perform domestic work in the private  
9 residence of a family member; or who is 18 years of age or older  
10 and resides in a private residence in which an individual performs  
11 domestic work. For purposes of such claims brought by an  
12 employee who performs domestic work, it shall also be an unlawful  
13 employment practice for an employer to allow any family member  
14 or member of their household, regardless of age, to engage in  
15 unlawful harassment based on any other category protected by this  
16 subsection, or for an employer to keep or request to keep permanent  
17 or continuing possession of the employee’s passport or other  
18 identifying documents.

19 c. (1) The standard for assessing an unlawful harassment claim  
20 under P.L.1945, c.169 (C.10:5-1 et seq.) alleging an intimidating,  
21 hostile, or offensive environment in housing or a place of public  
22 accommodation, including a school, shall be equivalent to the  
23 standard set forth in paragraph (1) of subsection b. of this section,  
24 but shall include consideration of whether the harassment created an  
25 intimidating, hostile, or offensive environment in housing, school,  
26 or other place of public accommodation.

27 (2) The standard for assessing liability of an entity for an  
28 unlawful harassment claim under P.L.1945, c.169 (C.10:5-1 et seq.)  
29 alleging an intimidating, hostile, or offensive environment in  
30 housing or a place of public accommodation, including a school,  
31 shall be equivalent to the standard set forth in paragraph (2) of  
32 subsection b. of this section, but shall include consideration of  
33 whether the entity took appropriate preventive or corrective action  
34 in the applicable setting of housing, a school, or other place of  
35 public accommodation.

36 (3) The standard for assessing liability of an entity for an  
37 unlawful harassment claim under P.L.1945, c.169 (C.10:5-1 et seq.)  
38 alleging an intimidating, hostile, or offensive work environment in  
39 the context of a business relationship brought pursuant to  
40 subsection l. of section 11 of P.L.1945, c.169 (C.10:5-12), shall be  
41 equivalent to the standard set forth in paragraph (2) of subsection b.  
42 of this section.

43  
44 3. (New section) Mandatory workplace policies on unlawful  
45 discrimination and harassment, including sexual harassment.

46 a. For purposes of this section, the terms “discrimination” and  
47 “harassment” refer to unlawful discrimination or harassment of an

1 individual because of any characteristic of the individual protected  
2 by subsection a. of section 11 of P.L.1945, c.169 (C.10:5-12).

3 b. Within one year of the date of enactment of P.L. , c.  
4 (C. ) (pending before the Legislature as this bill), all employers  
5 shall adopt a written nondiscrimination policy that establishes  
6 policies and procedures concerning unlawful discrimination and  
7 harassment, including sexual harassment, in the workplace which is  
8 applicable to all employees in their interactions with each other and  
9 with vendors, suppliers, customers, clients, and patrons, and which  
10 shall include, at a minimum, the following:

11 (1) a statement that unlawful discrimination or harassment in the  
12 workplace will not be tolerated and are considered a form of  
13 employee misconduct, and that sanctions will be enforced against  
14 individuals engaging in unlawful discrimination or harassment and  
15 against supervisory and managerial personnel who knowingly allow  
16 such behavior to continue;

17 (2) a definition of unlawful discrimination and unlawful  
18 harassment in employment;

19 (3) examples of discriminatory and harassing behaviors  
20 prohibited by the policy;

21 (4) a description of the process for filing internal complaints  
22 about such discrimination or harassment and the complete contact  
23 information of the person or persons to whom complaints should be  
24 made;

25 (5) directions as to how to contact the division if a person  
26 believes their rights were violated;

27 (6) the statute of limitations periods applicable to filing a claim  
28 of unlawful discrimination and harassment under P.L.1945, c.169  
29 (C.10:5-1 et seq.);

30 (7) a prohibition on retaliation against those who disclose,  
31 report, participate in an investigation of, or otherwise challenge  
32 such discrimination or harassment;

33 (8) examples of retaliatory behaviors prohibited by the policy;

34 (9) a description of potential consequences for violating the  
35 policy; and

36 (10) a statement of the employer's commitment to conducting  
37 prompt, thorough, and impartial investigations of complaints of  
38 such discrimination or harassment.

39 c. All employers shall disseminate the policy required in  
40 subsection b. of this section at least once annually to all employees,  
41 and to each employee:

42 (1) at the beginning of their employment;

43 (2) who complains internally about a violation of the policy, at  
44 the time such complaint is made;

45 (3) who is interviewed by the employer or the employer's  
46 designee in connection with any investigation of any complaint  
47 about a violation of the policy, prior to or at the time of such  
48 interview; and

1 (4) whenever any updates to the policy are made.

2 d. All employers shall review the policy at least annually to  
3 ensure that it complies with this section and other applicable laws  
4 and regulations.

5 e. All employers shall make the policy available in English,  
6 Spanish and any language spoken by an employee who does not  
7 speak English as their primary language and who has a limited  
8 ability or no ability to read, speak, write, or understand English, if  
9 the division has made the model policy described in paragraph (1)  
10 of subsection f. of this section available in that language.

11 f. The division shall, within six months of the date of  
12 enactment of this act, at a minimum:

13 (1) create one model nondiscrimination policy that satisfies the  
14 requirements of subsection b. of this section and that can be adopted  
15 by employers with fewer than 50 employees if they choose;

16 (2) create one model domestic work anti-harassment policy  
17 designed for use by any person who employs an individual to  
18 perform domestic work. That model policy shall include, but not be  
19 limited to, a definition of unlawful harassment, examples of  
20 harassing behaviors prohibited by the policy, the identity and role  
21 of the division, directions for how to contact the division, a  
22 description of unlawful retaliation, examples of retaliatory  
23 behaviors prohibited by the policy, and the applicable statute of  
24 limitations periods for bringing a claim under P.L.1945, c.169  
25 (C.10:5-1 et seq.); and

26 (3) make the model policies required by paragraphs (1) and (2)  
27 of this subsection available at no cost on the division's website in  
28 English, Spanish, and any other language deemed appropriate by  
29 the director, based on the size of the New Jersey state population  
30 that speaks each language and any other factor that the director  
31 shall deem relevant.

32 g. Employers with fewer than 50 employees may comply with:

33 (1) subsection b. of this section by adopting the model  
34 nondiscrimination policy promulgated by the division pursuant to  
35 paragraph (1) of subsection f. of this section and adding the  
36 complete contact information of the person or persons to whom  
37 complaints should be made;

38 (2) subsection c. of this section by distributing the model  
39 nondiscrimination policy promulgated by the division pursuant to  
40 paragraph (1) of subsection f. of this section to each employee:

41 (a) at the beginning of their employment;

42 (b) at least once annually;

43 (c) who complains internally about a violation of the policy, at  
44 the time such complaint is made;

45 (d) who is interviewed by the employer or the employer's  
46 designee in connection with any investigation of any complaint  
47 about a violation of the policy, prior to or at the time of such  
48 interview; and

- 1 (e) whenever any updates to the policy are made;
- 2 (3) subsection d. of this section by ensuring that they adopt the  
3 version of the model nondiscrimination policy promulgated by the  
4 division pursuant to paragraph (1) of subsection f. of this section in  
5 force at the time those employers conduct their annual review; and
- 6 (4) subsection e. of this section by providing a printed copy of  
7 the model nondiscrimination policy promulgated by the division  
8 pursuant to paragraph (1) of subsection f. of this section:
- 9 (a) in English; or
- 10 (b) in the language that an employee identifies as their primary  
11 language, if such employee has a limited ability or no ability to  
12 read, speak, write, or understand English and if the division has  
13 made the model policy available in that employee's primary  
14 language.
- 15 (5) Nothing in this subsection shall be interpreted as requiring  
16 an employer with fewer than 50 employees to adopt the model  
17 nondiscrimination policy promulgated by the division pursuant to  
18 paragraph (1) of subsection f. of this section rather than adopting its  
19 own policy that meets the requirements outlined in subsections b.,  
20 c., d., and e. of this section.
- 21 h. In addition to the requirements in subsections b., c., d., and  
22 e. of this section, employers with 50 or more employees shall:
- 23 (1) in addition to the content requirements outlined in  
24 subsection b. of this section, customize their policy to their specific  
25 workplace and industry by, at a minimum, including:
- 26 (a) multiple channels through which an employee may report  
27 unlawful discrimination or harassment; and
- 28 (b) a general description of the process by which the employer  
29 will conduct prompt, thorough, and impartial investigations and  
30 respond to complaints regarding such discrimination or harassment.
- 31 (2) In addition to the dissemination requirements outlined in  
32 subsection c. of this section:
- 33 (a) post the policy in a prominent location on the employer's  
34 website, provided, however, that nothing in this subsection shall  
35 require an employer to create or maintain a website for the sole  
36 purpose of posting the policy thereon; and
- 37 (b) disseminate the policy to any employee upon that  
38 employee's promotion.
- 39 (3) In addition to the translation requirements outlined in  
40 subsection e. of this section, translate the nondiscrimination policy  
41 required by subsection b. of this section into any language  
42 identified by an employee as their primary language, if such  
43 employee does not speak English as their primary language and has  
44 a limited ability or no ability to read, speak, write, or understand  
45 English.
- 46 i. Any person who employs an individual to perform domestic  
47 work in their private residence or in the private residence of a  
48 family member is encouraged, at the time of any such hire and at



1 least once annually, to provide to such individual a printed copy of  
2 the model domestic work anti-harassment policy promulgated by  
3 the division pursuant to paragraph (2) of subsection f. of this  
4 section.

5 j. For purposes of this section, an employer has 50 or more  
6 employees if such employer employs 50 or more employees,  
7 whether employed in New Jersey or not, for each work day during  
8 each of 20 or more calendar workweeks in the then current or  
9 immediately preceding calendar year.

10 k. Notwithstanding any other provision of P.L.1945, c.169  
11 (C.10:5-1 et seq.), nothing in this section shall be construed to  
12 permit a private person to file a complaint with the division or  
13 initiate an action in superior court alleging a violation of  
14 P.L.1945, c.169 (C.10:5-1 et seq.) because of any failure to comply  
15 with the provisions of this section. However, the Attorney General  
16 or the director may enforce violations of this section and may  
17 pursue any penalty or remedy available under P.L.1945, c.169  
18 (C.10:5-1 et seq.) in doing so. An employer's compliance with this  
19 section, or use of materials provided for herein, shall not, in and of  
20 itself, protect the employer from liability under this act.

21

22 4. (New section) Mandatory workplace training on unlawful  
23 discrimination and harassment, including sexual harassment.

24 a. For purposes of this section, the terms "discrimination" and  
25 "harassment" refer to unlawful discrimination or harassment against  
26 an individual because of any characteristic of the individual  
27 protected by subsection a. of section 11 of P.L.1945, c.169 (C.10:5-  
28 12).

29 b. Beginning one year from the effective date of P.L. , c.  
30 (C. ) (pending before the Legislature as this bill), all employers  
31 shall provide interactive training to all employees other than those  
32 employees covered by subsection c. of this section on the  
33 nondiscrimination policy required by section 3 of P.L. , c.  
34 (C. ) (pending before the Legislature as this bill), regarding the  
35 prevention of unlawful discrimination and harassment, including  
36 sexual harassment, in the workplace. The training shall be provided  
37 to all new employees within 90 days of initial hire, and to all  
38 employees at least once every two years. Such training shall  
39 include, at minimum:

40 (1) A statement that unlawful discrimination or harassment in  
41 the workplace will not be tolerated and are considered a form of  
42 employee misconduct, and that sanctions will be enforced against  
43 individuals engaging in discrimination or harassment and against  
44 supervisory and managerial personnel who knowingly allow such  
45 behavior to continue;

46 (2) A definition of unlawful discrimination and unlawful  
47 harassment in employment;

- 1 (3) Examples of discriminatory and harassing behaviors
  - 2 prohibited by the nondiscrimination policy adopted by the employer
  - 3 pursuant to section 3 of P.L. , c. (C. ) (pending before
  - 4 the Legislature as this bill);
  - 5 (4) A description of the process for filing internal complaints
  - 6 about such discrimination or harassment;
  - 7 (5) Directions as to how to contact the division if a person
  - 8 believes their rights were violated;
  - 9 (6) A description of the prohibition on retaliation against those
  - 10 who disclose, report, participate in an investigation of, or otherwise
  - 11 challenge such discrimination or harassment;
  - 12 (7) Examples of retaliatory behaviors prohibited by the
  - 13 nondiscrimination policy adopted by the employer pursuant to
  - 14 section 3 of P.L. , c. (C. ) (pending before the
  - 15 Legislature as this bill); and
  - 16 (8) Information concerning bystander intervention.
- 17 c. Beginning one year from the effective date of P.L. , c.
- 18 (C. ) (pending before the Legislature as this bill), all employers
- 19 shall provide interactive training to all supervisory employees
- 20 regarding the prevention of unlawful discrimination and harassment
- 21 in the workplace at least once every two years and shall provide
- 22 such training to all new supervisory employees within 90 days of
- 23 initial hire or promotion. Such training shall include, at minimum:
- 24 (1) the topics required by paragraphs (1) through (8) of
  - 25 subsection b. of this section;
  - 26 (2) the specific responsibilities of a supervisor regarding the
  - 27 prevention of discrimination and harassment;
  - 28 (3) the specific responsibilities of a supervisor regarding the
  - 29 prohibitions against retaliation; and
  - 30 (4) measures and corrective actions supervisors may take to
  - 31 appropriately address complaints and instances of discrimination,
  - 32 harassment, and retaliation.
- 33 d. All employers shall keep a record of their employees’
- 34 completion of all trainings required by subsections b. and c. of this
- 35 section. Such records may be electronic. Employers shall maintain
- 36 such records for at least three years and such records must be made
- 37 available for division inspection upon request.
- 38 e. All employers shall review the trainings required by
- 39 subsections b. and c. of this section at least annually to ensure that
- 40 they comply with this section and with other applicable laws and
- 41 regulations.
- 42 f. All employers shall make the trainings required by
- 43 subsections b. and c. of this section available:
- 44 (1) in English; and
  - 45 (2) in any language spoken by an employee who does not speak
  - 46 English as their primary language and who has a limited ability or
  - 47 no ability to read, speak, write, or understand English, if the

1 division has made the training described in subsection g. of this  
2 section available in that language.

3 g. In addition to any other actions the division may undertake,  
4 it shall, within six months of enactment of P.L. , c. (C. )  
5 (pending before the Legislature as this bill):

6 (1) develop an online, one-hour training module that satisfies  
7 the requirements of subsection b. of this section and that can be  
8 used by employers with fewer than 50 employees if they choose;

9 (2) develop an online, two-hour training module that satisfies  
10 the requirements of subsection c. of this section and that can be  
11 used by employers with fewer than 50 employees if they choose;  
12 and

13 (3) make the training modules required by paragraphs (1) and  
14 (2) of this subsection available at no cost on the division's website  
15 in English, Spanish, and any other language deemed appropriate by  
16 the director, based on the size of the New Jersey state population  
17 that speaks each language and any other factor that the director  
18 shall deem relevant.

19 h. Employers with fewer than 50 employees may comply with  
20 the requirements of subsections b. and c. of this section by requiring  
21 their employees to view the model nondiscrimination trainings  
22 promulgated by the division pursuant to subsection g. of this  
23 section. For any employer that chooses to utilize the model  
24 trainings promulgated by the division pursuant to subsection g. of  
25 this section, they may also comply with the requirements of:

26 (1) subsection e. of this section by ensuring that they utilize the  
27 version of the model nondiscrimination training promulgated by the  
28 division pursuant to subsection g. of this section in force at the time  
29 such training is given; and

30 (2) subsection f. of this section by directing each employee to  
31 the model nondiscrimination trainings made available on the  
32 division's website pursuant to subsection g. of this section in  
33 English, Spanish, and any other languages deemed appropriate by  
34 the director.

35 Nothing in this section shall be interpreted as requiring an  
36 employer with fewer than 50 employees to utilize the model  
37 nondiscrimination training promulgated by the division pursuant to  
38 subsection g. of this section rather than adopting their own  
39 nondiscrimination training that meets the minimum requirements  
40 outlined in subsections b. and c. of this section.

41 i. Employers with 50 or more employees shall provide the  
42 trainings required by subsections b. and c. of this section in a live,  
43 in-person setting where participants can ask questions. They may  
44 not comply with the requirements of this section by using the model  
45 nondiscrimination training promulgated by the division. Such  
46 employers shall also provide interpretation at the trainings required  
47 by subsections b. and c. of this section for any employee who does

1 not speak English as their primary language and has a limited  
2 ability or no ability to read, speak, write, or understand English.

3 j. For purposes of this section, an employer has 50 or more  
4 employees if such employer employs 50 or more employees,  
5 whether employed in New Jersey or not, for each work day during  
6 each of 20 or more calendar workweeks in the then current or  
7 immediately preceding calendar year.

8 k. For purposes of this section, “interactive training” means  
9 that the training must be participatory. However, except where  
10 explicitly required herein, such “interactive training” is not required  
11 to be live or facilitated by an in-person instructor in order to satisfy  
12 the provisions of this section.

13 l. The training required by this section is intended to establish  
14 a minimum threshold and should not discourage any employer from  
15 providing for longer, more frequent, or more elaborate training  
16 regarding workplace harassment or other forms of unlawful  
17 discrimination.

18 m. Notwithstanding any other provision of P.L.1945, c.169  
19 (C.10:5-1 et seq.), nothing in this section shall be construed to  
20 permit a private person to file a complaint with the division or  
21 initiate an action in superior court alleging a violation of  
22 P.L.1945, c.169 (C.10:5-1 et seq.), because of any failure to comply  
23 with the provisions of this section. However, the Attorney General  
24 or the director may enforce violations of this section and may  
25 pursue any penalty or remedy available under P.L.1945, c.169  
26 (C.10:5-1 et seq.), in doing so. An employer’s compliance with this  
27 section, or use of materials provided for herein, shall not, in and of  
28 itself, protect the employer from liability for unlawful  
29 discrimination or harassment under this act.

30

31 5. (New section) Mandatory reporting on unlawful  
32 employment discrimination and harassment, including sexual  
33 harassment.

34 a. For purposes of this section, the terms “discrimination” and  
35 “harassment” refer to unlawful discrimination or harassment against  
36 an individual because of any characteristic of the individual  
37 protected by subsection a. of section 11 of P.L.1945, c.169 (C.10:5-  
38 12).

39 b. Beginning one year after the date of enactment of this act,  
40 employers with 50 or more employees shall be required to collect  
41 and annually report to the division the following data on complaints  
42 received regarding unlawful workplace discrimination or  
43 harassment, including sexual harassment, using the form created  
44 and made available on the division’s website pursuant to subsection  
45 e. of this section for that purpose: the total number of complaints  
46 filed; the number of complaints filed that were found by the  
47 employer to be substantiated; the number of complaints filed that

1 were found by the employer to be unsubstantiated; the number of  
2 complaints filed whose resolution is still pending.

3 c. The data submitted for each of the categories in subsection  
4 b. of this section shall be broken down by how many such  
5 complaints involved allegations of unlawful discrimination,  
6 harassment, or retaliation, as well as by the protected class or  
7 classes that the complainant alleged.

8 d. Employers shall be required to maintain any records related  
9 to the complaints reported to the division pursuant to subsections b.  
10 and c. of this section for at least three years and such records must  
11 be made available for division inspection upon request.

12 e. The division shall, within six months of the date of  
13 enactment of this act, create a form to be used by employers when  
14 submitting the data required to be reported under subsections b. and  
15 c. of this section. The division shall make such form available at no  
16 cost on its website.

17 f. For purposes of this section, an employer has 50 or more  
18 employees if such employer employs 50 or more employees,  
19 whether employed in New Jersey or not, for each work day during  
20 each of 20 or more calendar workweeks in the then current or  
21 immediately preceding calendar year.

22 g. Notwithstanding any other provision of P.L.1945, c.169  
23 (C.10:5-1 et seq.), nothing in this section shall be construed to  
24 permit a private person to file a complaint with the division or  
25 initiate an action in superior court alleging a violation of  
26 P.L.1945, c.169 (C.10:5-1 et seq.) because of any failure to comply  
27 with the provisions of this section. However, the Attorney General  
28 or the director may enforce violations of this section and may  
29 pursue any penalty or remedy available under P.L.1945, c. 169  
30 (C.10:5-1 et seq.), in doing so. An employer's compliance with this  
31 section, or use of materials provided for herein, shall not, in and of  
32 itself, protect the employer from liability for unlawful  
33 discrimination or harassment under this act.

34

35 6. Section 5 of P.L.1945, c.169 (C.10:5-5) is amended to read  
36 as follows:

37 5. As used in P.L.1945, c.169 (C.10:5-1 et seq.), unless a  
38 different meaning clearly appears from the context:

39 a. "Person" includes one or more individuals, partnerships,  
40 associations, organizations, labor organizations, corporations, legal  
41 representatives, trustees, trustees in bankruptcy, receivers, and  
42 fiduciaries.

43 b. "Employment agency" includes any person undertaking to  
44 procure employees or opportunities for others to work.

45 c. "Labor organization" includes any organization which exists  
46 and is constituted for the purpose, in whole or in part, of collective  
47 bargaining, or of dealing with employers concerning grievances,

1 terms or conditions of employment, or of other mutual aid or  
2 protection in connection with employment.

3 d. “Unlawful employment practice” and “unlawful  
4 discrimination” include only those unlawful practices and acts  
5 specified in section 11 of P.L.1945, c.169 (C.10:5-12), and  
6 practices and acts determined, pursuant to section 2 of  
7 P.L. , c. (C. ) (pending before the Legislature as this bill) to  
8 constitute unlawful harassment.

9 e. “Employer” includes all persons as defined in subsection a.  
10 of this section unless otherwise specifically exempt under another  
11 section of P.L.1945, c.169 (C.10:5-1 et seq.), and includes the State,  
12 any political or civil subdivision thereof, and all public officers,  
13 agencies, boards, or bodies; provided, however, that employing any  
14 person to perform domestic work in an individual’s home or the  
15 home of an individual’s family member shall not qualify the  
16 individual as an employer, except as set forth in subsections a. and  
17 r. of section 11 of P.L.1945, c.169 (C.10:5-12).

18 f. “Employee” **【**does not include any individual employed in  
19 the domestic service of any person**】** includes all individuals  
20 employed by an employer, without regard to whether any such  
21 individual, including an intern, performs such services in exchange  
22 for a salary or wage; provided, however, that nothing in this  
23 subsection shall be construed to alter the definition of employee  
24 under any other law or regulation other than for purposes of  
25 P.L.1945, c.169 (C.10:5-1 et seq.).

26 g. “Liability for service in the Armed Forces of the United  
27 States” means subject to being ordered as an individual or member  
28 of an organized unit into active service in the Armed Forces of the  
29 United States by reason of membership in the National Guard, naval  
30 militia or a reserve component of the Armed Forces of the United  
31 States, or subject to being inducted into such armed forces through  
32 a system of national selective service.

33 h. “Division” means the “Division on Civil Rights” created by  
34 P.L.1945, c.169 (C.10:5-1 et seq.).

35 i. “Attorney General” means the Attorney General of the State  
36 of New Jersey or the Attorney General’s representative or designee.

37 j. “Commission” means the Commission on Civil Rights  
38 created by P.L.1945, c.169 (C.10:5-1 et seq.).

39 k. “Director” means the Director of the Division on Civil  
40 Rights.

41 l. “A place of public accommodation” shall include, but not be  
42 limited to: any tavern, roadhouse, hotel, motel, trailer camp,  
43 summer camp, day camp, or resort camp, whether for entertainment  
44 of transient guests or accommodation of those seeking health,  
45 recreation, or rest; any producer, manufacturer, wholesaler,  
46 distributor, retail shop, store, establishment, or concession dealing  
47 with goods or services of any kind; any restaurant, eating house, or  
48 place where food is sold for consumption on the premises; any

1 place maintained for the sale of ice cream, ice and fruit preparations  
2 or their derivatives, soda water or confections, or where any  
3 beverages of any kind are retailed for consumption on the premises;  
4 any garage, any public conveyance operated on land or water or in  
5 the air or any stations and terminals thereof; any bathhouse,  
6 boardwalk, or seashore accommodation; any auditorium, meeting  
7 place, or hall; any theatre, motion-picture house, music hall, roof  
8 garden, skating rink, swimming pool, amusement and recreation  
9 park, fair, bowling alley, gymnasium, shooting gallery, billiard and  
10 pool parlor, or other place of amusement; any comfort station; any  
11 dispensary, clinic, or hospital; any public library; and any  
12 kindergarten, primary and secondary school, trade or business  
13 school, high school, academy, college and university, or any  
14 educational institution under the supervision of the State Board of  
15 Education or the Commissioner of Education of the State of New  
16 Jersey. Nothing herein contained shall be construed to include or to  
17 apply to any institution, bona fide club, or place of accommodation,  
18 which is in its nature distinctly private; nor shall anything herein  
19 contained apply to any educational facility operated or maintained  
20 by a bona fide religious or sectarian institution, and the right of a  
21 natural parent or one in loco parentis to direct the education and  
22 upbringing of a child under his is hereby affirmed; nor shall  
23 anything herein contained be construed to bar any private secondary  
24 or post-secondary school from using in good faith criteria other than  
25 race, creed, color, national origin, ancestry, gender identity or  
26 expression or affectional or sexual orientation in the admission of  
27 students.

28 m. "A publicly assisted housing accommodation" shall include  
29 all housing built with public funds or public assistance pursuant to  
30 P.L.1949, c.300, P.L.1941, c.213, P.L.1944, c.169, P.L.1949, c.303,  
31 P.L.1938, c.19, P.L.1938, c.20, P.L.1946, c.52, and  
32 P.L.1949, c.184, and all housing financed in whole or in part by a  
33 loan, whether or not secured by a mortgage, the repayment of which  
34 is guaranteed or insured by the federal government or any agency  
35 thereof.

36 n. The term "real property" includes real estate, lands,  
37 tenements and hereditaments, corporeal and incorporeal, and  
38 leaseholds, provided, however, that, except as to publicly assisted  
39 housing accommodations, the provisions of this act shall not apply  
40 to the rental: (1) of a single apartment or flat in a two-family  
41 dwelling, the other occupancy unit of which is occupied by the  
42 owner as a residence; or (2) of a room or rooms to another person or  
43 persons by the owner or occupant of a one-family dwelling  
44 occupied by the owner or occupant as a residence at the time of  
45 such rental. Nothing herein contained shall be construed to bar any  
46 religious or denominational institution or organization, or any  
47 organization operated for charitable or educational purposes, which  
48 is operated, supervised, or controlled by or in connection with a

1 religious organization, in the sale, lease, or rental of real property,  
2 from limiting admission to or giving preference to persons of the  
3 same religion or denomination or from making such selection as is  
4 calculated by such organization to promote the religious principles  
5 for which it is established or maintained. Nor does any provision  
6 under this act regarding discrimination on the basis of familial  
7 status apply with respect to housing for older persons.

8 o. "Real estate broker" includes a person, firm, or corporation  
9 who, for a fee, commission, or other valuable consideration, or by  
10 reason of promise or reasonable expectation thereof, lists for sale,  
11 sells, exchanges, buys or rents, or offers or attempts to negotiate a  
12 sale, exchange, purchase, or rental of real estate or an interest  
13 therein, or collects or offers or attempts to collect rent for the use of  
14 real estate, or solicits for prospective purchasers or assists or directs  
15 in the procuring of prospects or the negotiation or closing of any  
16 transaction which does or is contemplated to result in the sale,  
17 exchange, leasing, renting, or auctioning of any real estate, or  
18 negotiates, or offers or attempts or agrees to negotiate a loan  
19 secured or to be secured by mortgage or other encumbrance upon or  
20 transfer of any real estate for others; or any person who, for  
21 pecuniary gain or expectation of pecuniary gain conducts a public  
22 or private competitive sale of lands or any interest in lands. In the  
23 sale of lots, the term "real estate broker" shall also include any  
24 person, partnership, association, or corporation employed by or on  
25 behalf of the owner or owners of lots or other parcels of real estate,  
26 at a stated salary, or upon a commission, or upon a salary and  
27 commission or otherwise, to sell such real estate, or any parts  
28 thereof, in lots or other parcels, and who shall sell or exchange, or  
29 offer or attempt or agree to negotiate the sale or exchange, of any  
30 such lot or parcel of real estate.

31 p. "Real estate salesperson" includes any person who, for  
32 compensation, valuable consideration or commission, or other thing  
33 of value, or by reason of a promise or reasonable expectation  
34 thereof, is employed by and operates under the supervision of a  
35 licensed real estate broker to sell or offer to sell, buy or offer to buy  
36 or negotiate the purchase, sale, or exchange of real estate, or offers  
37 or attempts to negotiate a loan secured or to be secured by a  
38 mortgage or other encumbrance upon or transfer of real estate, or to  
39 lease or rent, or offer to lease or rent any real estate for others, or to  
40 collect rents for the use of real estate, or to solicit for prospective  
41 purchasers or lessees of real estate, or who is employed by a  
42 licensed real estate broker to sell or offer to sell lots or other parcels  
43 of real estate, at a stated salary, or upon a commission, or upon a  
44 salary and commission, or otherwise to sell real estate, or any parts  
45 thereof, in lots or other parcels.

46 q. "Disability" means physical or sensory disability, infirmity,  
47 malformation, or disfigurement which is caused by bodily injury,  
48 birth defect, or illness including epilepsy and other seizure



1 disorders, and which shall include, but not be limited to, any degree  
2 of paralysis, amputation, lack of physical coordination, blindness or  
3 visual impairment, deafness or hearing impairment, muteness or  
4 speech impairment, or physical reliance on a service or guide dog,  
5 wheelchair, or other remedial appliance or device, or any mental,  
6 psychological, or developmental disability, including autism  
7 spectrum disorders, resulting from anatomical, psychological,  
8 physiological, or neurological conditions which prevents the typical  
9 exercise of any bodily or mental functions or is demonstrable,  
10 medically or psychologically, by accepted clinical or laboratory  
11 diagnostic techniques. Disability shall also mean AIDS or HIV  
12 infection.

13 r. "Blind person" or "person who is blind" means any  
14 individual whose central visual acuity does not exceed 20/200 in the  
15 better eye with correcting lens or whose visual acuity is better than  
16 20/200 if accompanied by a limit to the field of vision in the better  
17 eye to such a degree that its widest diameter subtends an angle of  
18 no greater than 20 degrees.

19 s. "Guide dog" means a dog used to assist persons who are  
20 deaf, or which is fitted with a special harness so as to be suitable as  
21 an aid to the mobility of a person who is blind, and is used by a  
22 person who is blind and has satisfactorily completed a specific  
23 course of training in the use of such a dog, and has been trained by  
24 an organization generally recognized by agencies involved in the  
25 rehabilitation of persons with disabilities, including, but not limited  
26 to, those persons who are blind or deaf, as reputable and competent  
27 to provide dogs with training of this type.

28 t. "Guide or service dog trainer" means any person who is  
29 employed by an organization generally recognized by agencies  
30 involved in the rehabilitation of persons with disabilities, including,  
31 but not limited to, those persons who are blind, have visual  
32 impairments, or are deaf or have hearing impairments, as reputable  
33 and competent to provide dogs with training, as defined in this  
34 section, and who is actually involved in the training process.

35 u. "Housing accommodation" means any publicly assisted  
36 housing accommodation or any real property, or portion thereof,  
37 which is used or occupied, or is intended, arranged, or designed to  
38 be used or occupied, as the home, residence, or sleeping place of  
39 one or more persons, but shall not include any single family  
40 residence the occupants of which rent, lease, or furnish for  
41 compensation not more than one room therein.

42 v. "Public facility" means any place of public accommodation  
43 and any street, highway, sidewalk, walkway, public building, and  
44 any other place or structure to which the general public is regularly,  
45 normally, or customarily permitted or invited.

46 w. "Deaf person" or "person who is deaf" means any person  
47 whose hearing is so severely impaired that the person is unable to  
48 hear and understand conversational speech through the unaided ear

- 1 alone, and who must depend primarily on an assistive listening  
2 device or visual communication such as writing, lip reading, sign  
3 language, and gestures.
- 4 x. "Atypical hereditary cellular or blood trait" means sickle cell  
5 trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic  
6 fibrosis trait.
- 7 y. "Sickle cell trait" means the condition wherein the major  
8 natural hemoglobin components present in the blood of the  
9 individual are hemoglobin A (normal) and hemoglobin S (sickle  
10 hemoglobin) as defined by standard chemical and physical analytic  
11 techniques, including electrophoresis; and the proportion of  
12 hemoglobin A is greater than the proportion of hemoglobin S or one  
13 natural parent of the individual is shown to have only normal  
14 hemoglobin components (hemoglobin A, hemoglobin A2,  
15 hemoglobin F) in the normal proportions by standard chemical and  
16 physical analytic tests.
- 17 z. "Hemoglobin C trait" means the condition wherein the major  
18 natural hemoglobin components present in the blood of the  
19 individual are hemoglobin A (normal) and hemoglobin C as defined  
20 by standard chemical and physical analytic techniques, including  
21 electrophoresis; and the proportion of hemoglobin A is greater than  
22 the proportion of hemoglobin C or one natural parent of the  
23 individual is shown to have only normal hemoglobin components  
24 (hemoglobin A, hemoglobin A2, hemoglobin F) in normal  
25 proportions by standard chemical and physical analytic tests.
- 26 aa. "Thalassemia trait" means the presence of the thalassemia  
27 gene which in combination with another similar gene results in the  
28 chronic hereditary disease Cooley's anemia.
- 29 bb. "Tay-Sachs trait" means the presence of the Tay-Sachs gene  
30 which in combination with another similar gene results in the  
31 chronic hereditary disease Tay-Sachs.
- 32 cc. "Cystic fibrosis trait" means the presence of the cystic  
33 fibrosis gene which in combination with another similar gene  
34 results in the chronic hereditary disease cystic fibrosis.
- 35 dd. "Service dog" means any dog individually trained to the  
36 requirements of a person with a disability including, but not limited  
37 to minimal protection work, rescue work, pulling a wheelchair or  
38 retrieving dropped items. This term shall include a "seizure dog"  
39 trained to alert or otherwise assist persons with epilepsy or other  
40 seizure disorders.
- 41 ee. "Qualified Medicaid applicant" means an individual who is a  
42 qualified applicant pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).
- 43 ff. "AIDS" means acquired immune deficiency syndrome as  
44 defined by the Centers for Disease Control and Prevention of the  
45 United States Public Health Service.
- 46 gg. "HIV infection" means infection with the human  
47 immunodeficiency virus or any other related virus identified as a  
48 probable causative agent of AIDS.

- 1       hh. “Affectional or sexual orientation” means male or female  
2       heterosexuality, homosexuality, or bisexuality by inclination,  
3       practice, identity, or expression, having a history thereof or being  
4       perceived, presumed, or identified by others as having such an  
5       orientation.
- 6       ii. “Heterosexuality” means affectional, emotional, or physical  
7       attraction or behavior which is primarily directed towards persons  
8       of the other gender.
- 9       jj. “Homosexuality” means affectional, emotional, or physical  
10      attraction or behavior which is primarily directed towards persons  
11      of the same gender.
- 12      kk. “Bisexuality” means affectional, emotional, or physical  
13      attraction or behavior which is directed towards persons of either  
14      gender.
- 15      ll. “Familial status” means being the natural parent of a child,  
16      the adoptive parent of a child, the resource family parent of a child,  
17      having a “parent and child relationship” with a child as defined by  
18      State law, or having sole or joint legal or physical custody, care,  
19      guardianship, or visitation with a child, or any person who is  
20      pregnant or is in the process of securing legal custody of any  
21      individual who has not attained the age of 18 years.
- 22      mm. “Housing for older persons” means housing:
- 23      (1) provided under any State program that the Attorney General  
24      determines is specifically designed and operated to assist persons  
25      who are elderly (as defined in the State program); or provided under  
26      any federal program that the United States Department of Housing  
27      and Urban Development determines is specifically designed and  
28      operated to assist persons who are elderly (as defined in the federal  
29      program); or
- 30      (2) intended for, and solely occupied by, persons 62 years of age  
31      or older; or
- 32      (3) intended and operated for occupancy by at least one person  
33      55 years of age or older per unit. In determining whether housing  
34      qualifies as housing for older persons under this paragraph, the  
35      Attorney General shall adopt regulations which require at least the  
36      following factors:
- 37      (a) the existence of significant facilities and services  
38      specifically designed to meet the physical or social needs of older  
39      persons, or if the provision of such facilities and services is not  
40      practicable, that such housing is necessary to provide important  
41      housing opportunities for older persons; and
- 42      (b) that at least 80 percent of the units are occupied by at least  
43      one person 55 years of age or older per unit; and
- 44      (c) the publication of, and adherence to, policies and procedures  
45      which demonstrate an intent by the owner or manager to provide  
46      housing for persons 55 years of age or older.
- 47      Housing shall not fail to meet the requirements for housing for  
48      older persons by reason of: persons residing in such housing as of

1 September 13, 1988 not meeting the age requirements of this  
2 subsection, provided that new occupants of such housing meet the  
3 age requirements of this subsection; or unoccupied units, provided  
4 that such units are reserved for occupancy by persons who meet the  
5 age requirements of this subsection.

6 nn. “Genetic characteristic” means any inherited gene or  
7 chromosome, or alteration thereof, that is scientifically or medically  
8 believed to predispose an individual to a disease, disorder, or  
9 syndrome, or to be associated with a statistically significant  
10 increased risk of development of a disease, disorder, or syndrome.

11 oo. “Genetic information” means the information about genes,  
12 gene products, or inherited characteristics that may derive from an  
13 individual or family member.

14 pp. “Genetic test” means a test for determining the presence or  
15 absence of an inherited genetic characteristic in an individual,  
16 including tests of nucleic acids such as DNA, RNA, and  
17 mitochondrial DNA, chromosomes, or proteins in order to identify a  
18 predisposing genetic characteristic.

19 qq. “Domestic partnership” means a domestic partnership  
20 established pursuant to section 4 of P.L.2003, c.246 (C.26:8A-4).

21 rr. “Gender identity or expression” means having or being  
22 perceived as having a gender related identity or expression whether  
23 or not stereotypically associated with a person’s assigned sex.

24 ss. “Civil Union” means a legally recognized union of two  
25 eligible individuals established pursuant to R.S.37:1-1 et seq. and  
26 P.L.2006, c.103 (C.37:1-28 et al.).

27 tt. “Premium wages” means additional remuneration for night,  
28 weekend, or holiday work, or for standby or irregular duty.

29 uu. “Premium benefit” means an employment benefit, such as  
30 seniority, group life insurance, health insurance, disability  
31 insurance, sick leave, annual leave, or an educational or pension  
32 benefit that is greater than the employment benefit due the  
33 employee for an equivalent period of work performed during the  
34 regular work schedule of the employee.

35 vv. “Race” is inclusive of traits historically associated with race,  
36 including, but not limited to, hair texture, hair type, and protective  
37 hairstyles.

38 ww. “Protective hair styles” includes, but is not limited to, such  
39 hairstyles as braids, locks, and twists.

40 xx. “Family member” means a child, parent, parent-in-law,  
41 sibling, grandparent, grandchild, spouse, domestic partner, or one  
42 partner in a civil union couple, or any other individual related by  
43 blood to the person, and any other individual that the person shows  
44 to have a close association with the person which is the equivalent  
45 of a family relationship.

46 yy. “Domestic work” means services related to the care of  
47 persons in private residences or maintenance of private residences  
48 or their premises, including, but not limited to, services performed

1 by a nanny, au pair, babysitter, house cleaner, housekeeper, maid,  
2 caretaker, home care worker, cook, chef, butler, gardener, or  
3 household manager; provided, however, that “domestic work” shall  
4 not include:

5 (1) any such services provided by a parent, grandparent, spouse,  
6 sibling, child, or other immediate family member of the employer;  
7 or

8 (2) services limited to casual and occasional house- or pet-  
9 sitting duties performed when members of the household are not on  
10 the premises.

11 zz. “Intern” means an individual who performs services for an  
12 employer on a temporary basis whose work:

13 (1) provides training or supplements training given in an  
14 educational environment such that the employability of the  
15 individual performing the work may be enhanced;

16 (2) provides experience for the benefit of the individual  
17 performing the work; and

18 (3) is performed under the supervision of existing staff.

19 The term “intern” shall include individuals without regard to  
20 whether the employer pays them a salary or wage.

21 (cf: P.L.2019, c.436, s.2)

22

23 7. Section 11 of P.L.1945, c.169 (C.10:5-12) is amended to  
24 read:

25 11. It shall be an unlawful employment practice, or, as the case  
26 may be, an unlawful discrimination:

27 a. For an employer, because of the race, creed, color, national  
28 origin, ancestry, age, marital status, civil union status, domestic  
29 partnership status, affectional or sexual orientation, genetic  
30 information, pregnancy or breastfeeding, sex, gender identity or  
31 expression, disability or atypical hereditary cellular or blood trait of  
32 any individual, or because of the liability for service in the Armed  
33 Forces of the United States or the nationality of any individual, or  
34 because of the refusal to submit to a genetic test or make available  
35 the results of a genetic test to an employer, to refuse to hire or  
36 employ or to bar or to discharge or require to retire, unless justified  
37 by lawful considerations other than age, from employment such  
38 individual or to discriminate against such individual in  
39 compensation or in terms, conditions or privileges of employment;  
40 provided, however, it shall not be an unlawful employment practice  
41 to refuse to accept for employment an applicant who has received a  
42 notice of induction or orders to report for active duty in the armed  
43 forces; provided further that nothing herein contained shall be  
44 construed to bar an employer from refusing to accept for  
45 employment any person on the basis of sex in those certain  
46 circumstances where sex is a bona fide occupational qualification,  
47 reasonably necessary to the normal operation of the particular  
48 business or enterprise; provided further that nothing herein

1 contained shall be construed to bar an employer from refusing to  
2 accept for employment or to promote any person over 70 years of  
3 age; provided further that it shall not be an unlawful employment  
4 practice for a club exclusively social or fraternal to use club  
5 membership as a uniform qualification for employment, or for a  
6 religious association or organization to utilize religious affiliation  
7 as a uniform qualification in the employment of clergy, religious  
8 teachers or other employees engaged in the religious activities of  
9 the association or organization, or in following the tenets of its  
10 religion in establishing and utilizing criteria for employment of an  
11 employee; and provided further, that it shall not be an unlawful  
12 employment practice to require the retirement of any employee  
13 who, for the two-year period immediately before retirement, is  
14 employed in a bona fide executive or a high policy-making position,  
15 if that employee is entitled to an immediate non-forfeitable annual  
16 retirement benefit from a pension, profit sharing, savings or  
17 deferred retirement plan, or any combination of those plans, of the  
18 employer of that employee which equals in the aggregate at least  
19 \$27,000.00; and provided further that an employer may restrict  
20 employment to citizens of the United States where such restriction  
21 is required by federal law or is otherwise necessary to protect the  
22 national interest.

23 The provisions of subsections a. and b. of section 57 of  
24 P.L.2003, c.246 (C.34:11A-20), and the provisions of section 58 of  
25 P.L.2003, c.246 (C.26:8A-11), shall not be deemed to be an  
26 unlawful discrimination under P.L.1945, c.169 (C.10:5-1 et seq.).

27 For purposes of claims brought under this subsection alleging  
28 that an employer is liable for an unlawful employment practice  
29 because an employee was subjected to sexual harassment or  
30 unlawful harassment based on any other category protected by this  
31 subsection, the definition of “employer” shall include any person  
32 who employs an individual to perform domestic work in their  
33 private residence; who employs an individual to perform domestic  
34 work in the private residence of a family member; or who is 18  
35 years of age or older and resides in a private residence in which an  
36 individual performs domestic work.

37 For purposes of such claims brought by an employee who  
38 performs domestic work, it shall also be an unlawful employment  
39 practice for an employer to allow any family member or member of  
40 their household, regardless of age, to engage in sexual harassment  
41 or unlawful harassment based on any other category protected by  
42 this subsection, or for an employer to keep or request to keep  
43 permanent or continuing possession of the employee’s passport or  
44 other identifying documents.

45 For the purposes of this subsection, a “bona fide executive” is a  
46 top level employee who exercises substantial executive authority  
47 over a significant number of employees and a large volume of  
48 business. A “high policy-making position” is a position in which a

1 person plays a significant role in developing policy and in  
2 recommending the implementation thereof.

3 For the purposes of this subsection, an unlawful employment  
4 practice occurs, with respect to discrimination in compensation or  
5 in the financial terms or conditions of employment, each occasion  
6 that an individual is affected by application of a discriminatory  
7 compensation decision or other practice, including, but not limited  
8 to, each occasion that wages, benefits, or other compensation are  
9 paid, resulting in whole or in part from the decision or other  
10 practice.

11 In addition to any other relief authorized by the “Law Against  
12 Discrimination,” P.L.1945, c.169 (C.10:5-1 et seq.) for  
13 discrimination in compensation or in the financial terms or  
14 conditions of employment, liability shall accrue and an aggrieved  
15 person may obtain relief for back pay for the entire period of time ,  
16 except not more than six years, in which the violation with regard to  
17 discrimination in compensation or in the financial terms or  
18 conditions of employment has been continuous, if the violation  
19 continues to occur within the statute of limitations.

20 Nothing in this subsection shall prohibit the application of the  
21 doctrine of “continuing violation” or the “discovery rule” to any  
22 appropriate claim as those doctrines currently exist in New Jersey  
23 common law. It shall be an unlawful employment practice to  
24 require employees or prospective employees to consent to a  
25 shortened statute of limitations or to waive any of the protections  
26 provided by the “Law Against Discrimination,” P.L.1945, c.169  
27 (C.10:5-1 et seq.).

28 b. For a labor organization, because of the race, creed, color,  
29 national origin, ancestry, age, marital status, civil union status,  
30 domestic partnership status, affectional or sexual orientation,  
31 gender identity or expression, disability, pregnancy or  
32 breastfeeding, or sex of any individual, or because of the liability  
33 for service in the Armed Forces of the United States or nationality  
34 of any individual, to exclude or to expel from its membership such  
35 individual or to discriminate in any way against any of its members,  
36 against any applicant for, or individual included in, any apprentice  
37 or other training program or against any employer or any individual  
38 employed by an employer; provided, however, that nothing herein  
39 contained shall be construed to bar a labor organization from  
40 excluding from its apprentice or other training programs any person  
41 on the basis of sex in those certain circumstances where sex is a  
42 bona fide occupational qualification reasonably necessary to the  
43 normal operation of the particular apprentice or other training  
44 program.

45 c. For any employer or employment agency to print or circulate  
46 or cause to be printed or circulated any statement, advertisement or  
47 publication, or to use any form of application for employment, or to  
48 make an inquiry in connection with prospective employment, which

1 expresses, directly or indirectly, any limitation, specification or  
2 discrimination as to race, creed, color, national origin, ancestry,  
3 age, marital status, civil union status, domestic partnership status,  
4 affectional or sexual orientation, gender identity or expression,  
5 nationality, pregnancy or breastfeeding, or sex or liability of any  
6 applicant for employment for service in the Armed Forces of the  
7 United States, or any intent to make any such limitation,  
8 specification or discrimination, unless based upon a bona fide  
9 occupational qualification.

10 d. For any person to take reprisals against any person because  
11 that person has opposed any practices or acts forbidden under this  
12 act or because that person has sought legal advice regarding rights  
13 under this act, shared relevant information with legal counsel,  
14 shared information with a governmental entity, or filed a complaint,  
15 testified or assisted in any proceeding under this act or to coerce,  
16 intimidate, threaten or interfere with any person in the exercise or  
17 enjoyment of, or on account of that person having aided or  
18 encouraged any other person in the exercise or enjoyment of, any  
19 right granted or protected by this act.

20 e. For any person, whether an employer or an employee or not,  
21 to aid, abet, incite, compel or coerce the doing of any of the acts  
22 forbidden under this act, or to attempt to do so.

23 f. (1) For any owner, lessee, proprietor, manager,  
24 superintendent, agent, or employee of any place of public  
25 accommodation directly or indirectly to unlawfully refuse, withhold  
26 from or deny to any person any of the accommodations, advantages,  
27 facilities or privileges thereof, or to discriminate against any person  
28 in the furnishing thereof, or directly or indirectly to publish,  
29 circulate, issue, display, post or mail any written or printed  
30 communication, notice, or advertisement to the effect that any of  
31 the accommodations, advantages, facilities, or privileges of any  
32 such place will be refused, withheld from, or denied to any person  
33 on account of the race, creed, color, national origin, ancestry,  
34 marital status, civil union status, domestic partnership status,  
35 pregnancy or breastfeeding, sex, gender identity or expression,  
36 affectional or sexual orientation, disability, liability for service in  
37 the Armed Forces of the United States or nationality of such person,  
38 or that the patronage or custom thereat of any person of any  
39 particular race, creed, color, national origin, ancestry, marital status,  
40 civil union status, domestic partnership status, pregnancy or  
41 breastfeeding status, sex, gender identity or expression, affectional  
42 or sexual orientation, disability, liability for service in the Armed  
43 Forces of the United States or nationality is unwelcome,  
44 objectionable or not acceptable, desired or solicited, and the  
45 production of any such written or printed communication, notice or  
46 advertisement, purporting to relate to any such place and to be made  
47 by any owner, lessee, proprietor, superintendent or manager thereof,  
48 shall be presumptive evidence in any action that the same was



1 authorized by such person; provided, however, that nothing  
2 contained herein shall be construed to bar any place of public  
3 accommodation which is in its nature reasonably restricted  
4 exclusively to individuals of one sex, and which shall include but  
5 not be limited to any summer camp, day camp, or resort camp,  
6 bathhouse, dressing room, swimming pool, gymnasium, comfort  
7 station, dispensary, clinic or hospital, or school or educational  
8 institution which is restricted exclusively to individuals of one sex,  
9 provided individuals shall be admitted based on their gender  
10 identity or expression, from refusing, withholding from or denying  
11 to any individual of the opposite sex any of the accommodations,  
12 advantages, facilities or privileges thereof on the basis of sex;  
13 provided further, that the foregoing limitation shall not apply to any  
14 restaurant as defined in R.S.33:1-1 or place where alcoholic  
15 beverages are served.

16 (2) Notwithstanding the definition of “a place of public  
17 accommodation” as set forth in subsection 1. of section 5 of  
18 P.L.1945, c.169 (C.10:5-5), for any owner, lessee, proprietor,  
19 manager, superintendent, agent, or employee of any private club or  
20 association to directly or indirectly refuse, withhold from or deny to  
21 any individual who has been accepted as a club member and has  
22 contracted for or is otherwise entitled to full club membership any  
23 of the accommodations, advantages, facilities or privileges thereof,  
24 or to discriminate against any member in the furnishing thereof on  
25 account of the race, creed, color, national origin, ancestry, marital  
26 status, civil union status, domestic partnership status, pregnancy or  
27 breastfeeding, sex, gender identity or expression, affectional or  
28 sexual orientation, disability, liability for service in the Armed  
29 Forces of the United States or nationality of such person.

30 In addition to the penalties otherwise provided for a violation of  
31 P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2)  
32 of subsection f. of this section is the holder of an alcoholic beverage  
33 license issued under the provisions of R.S.33:1-12 for that private  
34 club or association, the matter shall be referred to the Director of  
35 the Division of Alcoholic Beverage Control who shall impose an  
36 appropriate penalty in accordance with the procedures set forth in  
37 R.S.33:1-31.

38 g. For any person, including but not limited to, any owner,  
39 lessee, sublessee, assignee or managing agent of, or other person  
40 having the right of ownership or possession of or the right to sell,  
41 rent, lease, assign, or sublease any real property or part or portion  
42 thereof, or any agent or employee of any of these:

43 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise  
44 to deny to or withhold from any person or group of persons any real  
45 property or part or portion thereof because of race, creed, color,  
46 national origin, ancestry, marital status, civil union status, domestic  
47 partnership status, pregnancy or breastfeeding, sex, gender identity  
48 or expression, affectional or sexual orientation, familial status,

1 disability, liability for service in the Armed Forces of the United  
2 States, nationality, or source of lawful income used for rental or  
3 mortgage payments;

4 (2) To discriminate against any person or group of persons  
5 because of race, creed, color, national origin, ancestry, marital  
6 status, civil union status, domestic partnership status, pregnancy or  
7 breastfeeding, sex, gender identity or expression, affectional or  
8 sexual orientation, familial status, disability, liability for service in  
9 the Armed Forces of the United States, nationality, or source of  
10 lawful income used for rental or mortgage payments in the terms,  
11 conditions or privileges of the sale, rental or lease of any real  
12 property or part or portion thereof or in the furnishing of facilities  
13 or services in connection therewith;

14 (3) To print, publish, circulate, issue, display, post or mail, or  
15 cause to be printed, published, circulated, issued, displayed, posted  
16 or mailed any statement, advertisement, publication or sign, or to  
17 use any form of application for the purchase, rental, lease,  
18 assignment or sublease of any real property or part or portion  
19 thereof, or to make any record or inquiry in connection with the  
20 prospective purchase, rental, lease, assignment, or sublease of any  
21 real property, or part or portion thereof which expresses, directly or  
22 indirectly, any limitation, specification or discrimination as to race,  
23 creed, color, national origin, ancestry, marital status, civil union  
24 status, domestic partnership status, pregnancy or breastfeeding, sex,  
25 gender identity, or expression, affectional or sexual orientation,  
26 familial status, disability, liability for service in the Armed Forces  
27 of the United States, nationality, or source of lawful income used  
28 for rental or mortgage payments, or any intent to make any such  
29 limitation, specification or discrimination, and the production of  
30 any such statement, advertisement, publicity, sign, form of  
31 application, record, or inquiry purporting to be made by any such  
32 person shall be presumptive evidence in any action that the same  
33 was authorized by such person; provided, however, that nothing  
34 contained in this subsection shall be construed to bar any person  
35 from refusing to sell, rent, lease, assign or sublease or from  
36 advertising or recording a qualification as to sex for any room,  
37 apartment, flat in a dwelling or residential facility which is planned  
38 exclusively for and occupied by individuals of one sex to any  
39 individual of the exclusively opposite sex on the basis of sex  
40 provided individuals shall be qualified based on their gender  
41 identity or expression;

42 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise  
43 to deny to or withhold from any person or group of persons any real  
44 property or part or portion thereof because of the source of any  
45 lawful income received by the person or the source of any lawful  
46 rent payment to be paid for the real property; or

47 (5) To refuse to rent or lease any real property to another person  
48 because that person's family includes children under 18 years of

1 age, or to make an agreement, rental or lease of any real property  
2 which provides that the agreement, rental or lease shall be rendered  
3 null and void upon the birth of a child. This paragraph shall not  
4 apply to housing for older persons as defined in subsection mm. of  
5 section 5 of P.L.1945, c.169 (C.10:5-5).

6 h. For any person, including but not limited to, any real estate  
7 broker, real estate salesperson, or employee or agent thereof:

8 (1) To refuse to sell, rent, assign, lease or sublease, or offer for  
9 sale, rental, lease, assignment, or sublease any real property or part  
10 or portion thereof to any person or group of persons or to refuse to  
11 negotiate for the sale, rental, lease, assignment, or sublease of any  
12 real property or part or portion thereof to any person or group of  
13 persons because of race, creed, color, national origin, ancestry,  
14 marital status, civil union status, domestic partnership status,  
15 familial status, pregnancy or breastfeeding, sex, gender identity or  
16 expression, affectional or sexual orientation, liability for service in  
17 the Armed Forces of the United States, disability, nationality, or  
18 source of lawful income used for rental or mortgage payments, or to  
19 represent that any real property or portion thereof is not available  
20 for inspection, sale, rental, lease, assignment, or sublease when in  
21 fact it is so available, or otherwise to deny or withhold any real  
22 property or any part or portion of facilities thereof to or from any  
23 person or group of persons because of race, creed, color, national  
24 origin, ancestry, marital status, civil union status, domestic  
25 partnership status, familial status, pregnancy or breastfeeding, sex,  
26 gender identity or expression, affectional or sexual orientation,  
27 disability, liability for service in the Armed Forces of the United  
28 States, or;

29 (2) To discriminate against any person because of race, creed,  
30 color, national origin, ancestry, marital status, civil union status,  
31 domestic partnership status, familial status, pregnancy or  
32 breastfeeding, sex, gender identity or expression, affectional or  
33 sexual orientation, disability, liability for service in the Armed  
34 Forces of the United States, nationality, or source of lawful income  
35 used for rental or mortgage payments in the terms, conditions or  
36 privileges of the sale, rental, lease, assignment or sublease of any  
37 real property or part or portion thereof or in the furnishing of  
38 facilities or services in connection therewith;

39 (3) To print, publish, circulate, issue, display, post, or mail, or  
40 cause to be printed, published, circulated, issued, displayed, posted  
41 or mailed any statement, advertisement, publication or sign, or to  
42 use any form of application for the purchase, rental, lease,  
43 assignment, or sublease of any real property or part or portion  
44 thereof or to make any record or inquiry in connection with the  
45 prospective purchase, rental, lease, assignment, or sublease of any  
46 real property or part or portion thereof which expresses, directly or  
47 indirectly, any limitation, specification or discrimination as to race,  
48 creed, color, national origin, ancestry, marital status, civil union

1 status, domestic partnership status, familial status, pregnancy or  
2 breastfeeding, sex, gender identity or expression, affectional or  
3 sexual orientation, disability, liability for service in the Armed  
4 Forces of the United States, nationality, or source of lawful income  
5 used for rental or mortgage payments or any intent to make any  
6 such limitation, specification or discrimination, and the production  
7 of any such statement, advertisement, publicity, sign, form of  
8 application, record, or inquiry purporting to be made by any such  
9 person shall be presumptive evidence in any action that the same  
10 was authorized by such person; provided, however, that nothing  
11 contained in this subsection h., shall be construed to bar any person  
12 from refusing to sell, rent, lease, assign or sublease or from  
13 advertising or recording a qualification as to sex for any room,  
14 apartment, flat in a dwelling or residential facility which is planned  
15 exclusively for and occupied exclusively by individuals of one sex  
16 to any individual of the opposite sex on the basis of sex, provided  
17 individuals shall be qualified based on their gender identity or  
18 expression;

19 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise  
20 to deny to or withhold from any person or group of persons any real  
21 property or part or portion thereof because of the source of any  
22 lawful income received by the person or the source of any lawful  
23 rent payment to be paid for the real property; or

24 (5) To refuse to rent or lease any real property to another person  
25 because that person's family includes children under 18 years of  
26 age, or to make an agreement, rental or lease of any real property  
27 which provides that the agreement, rental or lease shall be rendered  
28 null and void upon the birth of a child. This paragraph shall not  
29 apply to housing for older persons as defined in subsection mm. of  
30 section 5 of P.L.1945, c.169 (C.10:5-5).

31 i. For any person, bank, banking organization, mortgage  
32 company, insurance company or other financial institution, lender  
33 or credit institution involved in the making or purchasing of any  
34 loan or extension of credit, for whatever purpose, whether secured  
35 by residential real estate or not, including but not limited to  
36 financial assistance for the purchase, acquisition, construction,  
37 rehabilitation, repair or maintenance of any real property or part or  
38 portion thereof or any agent or employee thereof:

39 (1) To discriminate against any person or group of persons  
40 because of race, creed, color, national origin, ancestry, marital  
41 status, civil union status, domestic partnership status, pregnancy or  
42 breastfeeding, sex, gender identity or expression, affectional or  
43 sexual orientation, disability, liability for service in the Armed  
44 Forces of the United States, familial status or nationality, in the  
45 granting, withholding, extending, modifying, renewing, or  
46 purchasing, or in the fixing of the rates, terms, conditions or  
47 provisions of any such loan, extension of credit or financial

- 1 assistance or purchase thereof or in the extension of services in  
2 connection therewith;
- 3 (2) To use any form of application for such loan, extension of  
4 credit or financial assistance or to make record or inquiry in  
5 connection with applications for any such loan, extension of credit  
6 or financial assistance which expresses, directly or indirectly, any  
7 limitation, specification or discrimination as to race, creed, color,  
8 national origin, ancestry, marital status, civil union status, domestic  
9 partnership status, pregnancy or breastfeeding, sex, gender identity  
10 or expression, affectional or sexual orientation, disability, liability  
11 for service in the Armed Forces of the United States, familial status  
12 or nationality or any intent to make any such limitation,  
13 specification or discrimination; unless otherwise required by law or  
14 regulation to retain or use such information;
- 15 (3) (Deleted by amendment, P.L.2003, c.180).
- 16 (4) To discriminate against any person or group of persons  
17 because of the source of any lawful income received by the person  
18 or the source of any lawful rent payment to be paid for the real  
19 property; or
- 20 (5) To discriminate against any person or group of persons  
21 because that person's family includes children under 18 years of  
22 age, or to make an agreement or mortgage which provides that the  
23 agreement or mortgage shall be rendered null and void upon the  
24 birth of a child. This paragraph shall not apply to housing for older  
25 persons as defined in subsection mm. of section 5 of  
26 P.L.1945, c.169 (C.10:5-5).
- 27 j. For any person whose activities are included within the  
28 scope of this act to refuse to post or display such notices concerning  
29 the rights or responsibilities of persons affected by this act as the  
30 Attorney General may by regulation require.
- 31 k. For any real estate broker, real estate salesperson or  
32 employee or agent thereof or any other individual, corporation,  
33 partnership, or organization, for the purpose of inducing a  
34 transaction for the sale or rental of real property from which  
35 transaction such person or any of its members may benefit  
36 financially, to represent that a change has occurred or will or may  
37 occur in the composition with respect to race, creed, color, national  
38 origin, ancestry, marital status, civil union status, domestic  
39 partnership status, familial status, pregnancy or breastfeeding, sex,  
40 gender identity or expression, affectional or sexual orientation,  
41 disability, liability for service in the Armed Forces of the United  
42 States, nationality, or source of lawful income used for rental or  
43 mortgage payments of the owners or occupants in the block,  
44 neighborhood or area in which the real property is located, and to  
45 represent, directly or indirectly, that this change will or may result  
46 in undesirable consequences in the block, neighborhood or area in  
47 which the real property is located, including, but not limited to the

1 lowering of property values, an increase in criminal or anti-social  
2 behavior, or a decline in the quality of schools or other facilities.

3 1. For any person to refuse to buy from, sell to, lease from or  
4 to, license, contract with, or trade with, provide goods, services or  
5 information to, or otherwise do business with any other person on  
6 the basis of the race, creed, color, national origin, ancestry, age,  
7 pregnancy or breastfeeding, sex, gender identity or expression,  
8 affectional or sexual orientation, marital status, civil union status,  
9 domestic partnership status, liability for service in the Armed  
10 Forces of the United States, disability, nationality, or source of  
11 lawful income used for rental or mortgage payments of such other  
12 person or of such other person's family members, partners,  
13 members, stockholders, directors, officers, managers,  
14 superintendents, agents, employees, business associates, suppliers,  
15 or customers. This subsection shall not prohibit refusals or other  
16 actions (1) pertaining to employee-employer collective bargaining,  
17 labor disputes, or unfair labor practices, or (2) made or taken in  
18 connection with a protest of unlawful discrimination or unlawful  
19 employment practices.

20 m. For any person to:

21 (1) Grant or accept any letter of credit or other document which  
22 evidences the transfer of funds or credit, or enter into any contract  
23 for the exchange of goods or services, where the letter of credit,  
24 contract, or other document contains any provisions requiring any  
25 person to discriminate against or to certify that he, she or it has not  
26 dealt with any other person on the basis of the race, creed, color,  
27 national origin, ancestry, age, pregnancy or breastfeeding, sex,  
28 gender identity or expression, affectional or sexual orientation,  
29 marital status, civil union status, domestic partnership status,  
30 disability, liability for service in the Armed Forces of the United  
31 States, or nationality of such other person or of such other person's  
32 family members, partners, members, stockholders, directors,  
33 officers, managers, superintendents, agents, employees, business  
34 associates, suppliers, or customers.

35 (2) Refuse to grant or accept any letter of credit or other  
36 document which evidences the transfer of funds or credit, or refuse  
37 to enter into any contract for the exchange of goods or services, on  
38 the ground that it does not contain such a discriminatory provision  
39 or certification.

40 The provisions of this subsection shall not apply to any letter of  
41 credit, contract, or other document which contains any provision  
42 pertaining to employee-employer collective bargaining, a labor  
43 dispute or an unfair labor practice, or made in connection with the  
44 protest of unlawful discrimination or an unlawful employment  
45 practice, if the other provisions of such letter of credit, contract, or  
46 other document do not otherwise violate the provisions of this  
47 subsection.

1 n. For any person to aid, abet, incite, compel, coerce, or induce  
2 the doing of any act forbidden by subsections l. and m. of section  
3 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to  
4 do so. Such prohibited conduct shall include, but not be limited to:

5 (1) Buying from, selling to, leasing from or to, licensing,  
6 contracting with, trading with, providing goods, services, or  
7 information to, or otherwise doing business with any person  
8 because that person does, or agrees or attempts to do, any such act  
9 or any act prohibited by this subsection; or

10 (2) Boycotting, commercially blacklisting or refusing to buy  
11 from, sell to, lease from or to, license, contract with, provide goods,  
12 services or information to, or otherwise do business with any person  
13 because that person has not done or refuses to do any such act or  
14 any act prohibited by this subsection; provided that this subsection  
15 shall not prohibit refusals or other actions either pertaining to  
16 employee-employer collective bargaining, labor disputes, or unfair  
17 labor practices, or made or taken in connection with a protest of  
18 unlawful discrimination or unlawful employment practices.

19 o. For any multiple listing service, real estate brokers'  
20 organization or other service, organization or facility related to the  
21 business of selling or renting dwellings to deny any person access  
22 to or membership or participation in such organization, or to  
23 discriminate against such person in the terms or conditions of such  
24 access, membership, or participation, on account of race, creed,  
25 color, national origin, ancestry, age, marital status, civil union  
26 status, domestic partnership status, familial status, pregnancy or  
27 breastfeeding, sex, gender identity or expression, affectional or  
28 sexual orientation, disability, liability for service in the Armed  
29 Forces of the United States or nationality.

30 p. Nothing in the provisions of this section shall affect the  
31 ability of an employer to require employees to adhere to reasonable  
32 workplace appearance, grooming and dress standards not precluded  
33 by other provisions of State or federal law, except that an employer  
34 shall allow an employee to appear, groom and dress consistent with  
35 the employee's gender identity or expression.

36 q. (1) For any employer to impose upon a person as a  
37 condition of obtaining or retaining employment, including  
38 opportunities for promotion, advancement or transfers, any terms or  
39 conditions that would require a person to violate or forego a  
40 sincerely held religious practice or religious observance, including  
41 but not limited to the observance of any particular day or days or  
42 any portion thereof as a Sabbath or other holy day in accordance  
43 with the requirements of the religion or religious belief, unless,  
44 after engaging in a bona fide effort, the employer demonstrates that  
45 it is unable to reasonably accommodate the employee's religious  
46 observance or practice without undue hardship on the conduct of the  
47 employer's business. Notwithstanding any other provision of law to  
48 the contrary, an employee shall not be entitled to premium wages or

1 premium benefits for work performed during hours to which those  
2 premium wages or premium benefits would ordinarily be  
3 applicable, if the employee is working during those hours only as an  
4 accommodation to **【his】** the employee's religious requirements.

5 Nothing in this subsection q. shall be construed as reducing:

6 (a) The number of the hours worked by the employee which are  
7 counted towards the accruing of seniority, pension or other benefits;  
8 or

9 (b) Any premium wages or benefits provided to an employee  
10 pursuant to a collective bargaining agreement.

11 (2) For an employer to refuse to permit an employee to utilize  
12 leave, as provided for in this subsection q., which is solely used to  
13 accommodate the employee's sincerely held religious observance or  
14 practice. Except where it would cause an employer to incur an  
15 undue hardship, no person shall be required to remain at **【his】** the  
16 person's place of employment during any day or days or portion  
17 thereof that, as a requirement of **【his】** the person's religion, **【he】**  
18 the person observes as **【his】** the person's Sabbath or other holy day,  
19 including a reasonable time prior and subsequent thereto for travel  
20 between **【his】** the person's place of employment and **【his】** the  
21 person's home; provided that any such absence from work shall,  
22 wherever practicable in the reasonable judgment of the employer,  
23 be made up by an equivalent amount of time and work at some  
24 other mutually convenient time, or shall be charged against any  
25 leave with pay ordinarily granted, other than sick leave, and any  
26 such absence not so made up or charged, may be treated by the  
27 employer of that person as leave taken without pay.

28 (3) (a) For purposes of this subsection q., "undue hardship"  
29 means an accommodation requiring unreasonable expense or  
30 difficulty, unreasonable interference with the safe or efficient  
31 operation of the workplace or a violation of a bona fide seniority  
32 system or a violation of any provision of a bona fide collective  
33 bargaining agreement.

34 (b) In determining whether the accommodation constitutes an  
35 undue hardship, the factors considered shall include:

36 (i) The identifiable cost of the accommodation, including the  
37 costs of loss of productivity and of retaining or hiring employees or  
38 transferring employees from one facility to another, in relation to  
39 the size and operating cost of the employer.

40 (ii) The number of individuals who will need the particular  
41 accommodation for a sincerely held religious observance or  
42 practice.

43 (iii) For an employer with multiple facilities, the degree to  
44 which the geographic separateness or administrative or fiscal  
45 relationship of the facilities will make the accommodation more  
46 difficult or expensive.



1 (c) An accommodation shall be considered to constitute an  
2 undue hardship if it will result in the inability of an employee to  
3 perform the essential functions of the position in which **[he or she]**  
4 the employee is employed.

5 (d) (i) The provisions of this subsection q. shall be applicable  
6 only to reasonable accommodations of religious observances and  
7 shall not supersede any definition of undue hardship or standards  
8 for reasonable accommodation of the disabilities of employees.

9 (ii) This subsection q. shall not apply where the uniform  
10 application of terms and conditions of attendance to employees is  
11 essential to prevent undue hardship to the employer. The burden of  
12 proof regarding the applicability of this subparagraph (d) shall be  
13 upon the employer.

14 r. For any employer to take reprisals against any employee for  
15 requesting from , discussing with, or disclosing to, any other  
16 employee or former employee of the employer, a lawyer from  
17 whom the employee seeks legal advice, or any government agency  
18 information regarding the job title, occupational category, and rate  
19 of compensation, including benefits, of the employee or any other  
20 employee or former employee of the employer, or the gender, race,  
21 ethnicity, military status, or national origin of the employee or any  
22 other employee or former employee of the employer, regardless of  
23 whether the request was responded to , or to require, as a condition  
24 of employment, any employee or prospective employee to sign a  
25 waiver, or to otherwise require an employee or prospective  
26 employee to agree, not to make those requests or disclosures.  
27 Nothing in this subsection shall be construed to require an  
28 employee to disclose such information about the employee herself  
29 to any other employee or former employee of the employer or to  
30 any authorized representative of the other employee or former  
31 employee.

32 For purposes of this subsection, the definition of “employer”  
33 includes any person who employs an individual to perform domestic  
34 work in their private residence; who employs an individual to  
35 perform domestic work in the private residence of a family member;  
36 or who is 18 years of age or older and resides in a private residence  
37 in which an individual performs domestic work.

38 s. For an employer to treat, for employment-related purposes, a  
39 woman employee that the employer knows, or should know, is  
40 affected by pregnancy or breastfeeding in a manner less favorable  
41 than the treatment of other persons not affected by pregnancy or  
42 breastfeeding but similar in their ability or inability to work. In  
43 addition, an employer of an employee who is a woman affected by  
44 pregnancy shall make available to the employee reasonable  
45 accommodation in the workplace, such as bathroom breaks, breaks  
46 for increased water intake, periodic rest, assistance with manual  
47 labor, job restructuring or modified work schedules, and temporary  
48 transfers to less strenuous or hazardous work, for needs related to

1 the pregnancy when the employee, based on the advice of her  
2 physician, requests the accommodation, and, in the case of an  
3 employee breast feeding her infant child, the accommodation shall  
4 include reasonable break time each day to the employee and a  
5 suitable room or other location with privacy, other than a toilet stall,  
6 in close proximity to the work area for the employee to express  
7 breast milk for the child, unless the employer can demonstrate that  
8 providing the accommodation would be an undue hardship on the  
9 business operations of the employer. The employer shall not in any  
10 way penalize the employee in terms, conditions or privileges of  
11 employment for requesting or using the accommodation. Workplace  
12 accommodation provided pursuant to this subsection and paid or  
13 unpaid leave provided to an employee affected by pregnancy or  
14 breastfeeding shall not be provided in a manner less favorable than  
15 accommodations or leave provided to other employees not affected  
16 by pregnancy or breastfeeding but similar in their ability or inability  
17 to work. This subsection shall not be construed as otherwise  
18 increasing or decreasing any employee's rights under law to paid or  
19 unpaid leave in connection with pregnancy or breastfeeding.

20 For the purposes of this section "pregnancy or breastfeeding"  
21 means pregnancy, childbirth, and breast feeding or expressing milk  
22 for breastfeeding, or medical conditions related to pregnancy,  
23 childbirth, or breastfeeding, including recovery from childbirth.

24 For the purposes of this subsection, in determining whether an  
25 accommodation would impose undue hardship on the operation of  
26 an employer's business, the factors to be considered include: the  
27 overall size of the employer's business with respect to the number  
28 of employees, number and type of facilities, and size of budget; the  
29 type of the employer's operations, including the composition and  
30 structure of the employer's workforce; the nature and cost of the  
31 accommodation needed, taking into consideration the availability of  
32 tax credits, tax deductions, and outside funding; and the extent to  
33 which the accommodation would involve waiver of an essential  
34 requirement of a job as opposed to a tangential or non-business  
35 necessity requirement.

36 t. For an employer to pay any of its employees who is a  
37 member of a protected class at a rate of compensation, including  
38 benefits, which is less than the rate paid by the employer to  
39 employees who are not members of the protected class for  
40 substantially similar work, when viewed as a composite of skill,  
41 effort and responsibility. An employer who is paying a rate of  
42 compensation in violation of this subsection shall not reduce the  
43 rate of compensation of any employee in order to comply with this  
44 subsection. An employer may pay a different rate of compensation  
45 only if the employer demonstrates that the differential is made  
46 pursuant to a seniority system, a merit system, or the employer  
47 demonstrates:

1 (1) That the differential is based on one or more legitimate, bona  
2 fide factors other than the characteristics of members of the  
3 protected class, such as training, education or experience, or the  
4 quantity or quality of production;

5 (2) That the factor or factors are not based on, and do not  
6 perpetuate, a differential in compensation based on sex or any other  
7 characteristic of members of a protected class;

8 (3) That each of the factors is applied reasonably;

9 (4) That one or more of the factors account for the entire wage  
10 differential; and

11 (5) That the factors are job-related with respect to the position  
12 in question and based on a legitimate business necessity. A factor  
13 based on business necessity shall not apply if it is demonstrated that  
14 there are alternative business practices that would serve the same  
15 business purpose without producing the wage differential.

16 Comparisons of wage rates shall be based on wage rates in all of  
17 an employer's operations or facilities. For the purposes of this  
18 subsection, "member of a protected class" means an employee who  
19 has one or more characteristics, including race, creed, color,  
20 national origin, nationality, ancestry, age, marital status, civil union  
21 status, domestic partnership status, affectional or sexual orientation,  
22 genetic information, pregnancy, sex, gender identity or expression,  
23 disability or atypical hereditary cellular or blood trait of any  
24 individual, or liability for service in the armed forces, for which  
25 subsection a. of this section prohibits an employer from refusing to  
26 hire or employ or barring or discharging or requiring to retire from  
27 employment or discriminating against the individual in  
28 compensation or in terms, conditions or privileges of employment.

29 Nothing in this subsection shall be interpreted to preclude  
30 employers from engaging interns in unpaid positions or paying  
31 interns at a different rate than other staff, provided, however, that if  
32 an employer provides compensation to interns, it may not provide  
33 such compensation to interns who are members of a protected class  
34 at a rate less than interns who are not members of the protected  
35 class for substantially similar work, when viewed as a composite of  
36 skill, effort and responsibility.

37 (cf: P.L.2019, c.436, s.3)

38

39 8. Section 1 of P.L.2019, c.39 (C.10:5-12.7) is amended to read  
40 as follows:

41 1. a. A provision in any employment contract, including any  
42 contract for the performance of domestic work, that waives any  
43 substantive or procedural right or remedy relating to a claim of  
44 discrimination, retaliation, or harassment shall be deemed against  
45 public policy and unenforceable.

46 b. No right or remedy under the "Law Against Discrimination,"  
47 P.L.1945, c.169 (C.10:5-1 et seq.) or any other statute or case law  
48 shall be prospectively waived.

1 c. This section shall not apply to the terms of any collective  
2 bargaining agreement between an employer and the collective  
3 bargaining representative of the employees.

4 (cf: P.L.2019, c.39, s.1)

5  
6 9. Section 2 of P.L.2019, c.39 (C.10:5-12.8) is amended to read  
7 as follows:

8 2. a. A provision in any employment contract or settlement  
9 agreement which has the purpose or effect of concealing the details  
10 relating to a claim of discrimination, retaliation, or harassment  
11 (hereinafter referred to as a “non-disclosure provision”) shall be  
12 deemed against public policy and unenforceable against a current or  
13 former employee (hereinafter referred to as an “employee”) who is  
14 a party to the contract or settlement. If the employee publicly  
15 reveals sufficient details of the claim so that the employer is  
16 reasonably identifiable, then the non-disclosure provision shall also  
17 be unenforceable against the employer.

18 b. Every settlement agreement resolving a discrimination,  
19 retaliation, or harassment claim by an employee against an  
20 employer shall include a bold, prominently placed notice that  
21 although the parties may have agreed to keep the settlement and  
22 underlying facts confidential, such a provision in an agreement is  
23 unenforceable against the employer if the employee publicly reveals  
24 sufficient details of the claim so that the employer is reasonably  
25 identifiable.

26 c. Notwithstanding any other provision of law to the contrary,  
27 this section shall not be construed to prohibit an employer from  
28 requiring an employee to sign an agreement:

29 (1) in which the employee agrees not to enter into competition  
30 with the employer during or after employment; or

31 (2) in which the employee agrees not to disclose proprietary  
32 information, which includes only non-public trade secrets, business  
33 plan and customer information.

34 d. For purposes of claims brought this section, the definition of  
35 “employer” includes any person who employs an individual to  
36 perform domestic work in their private residence; who employs an  
37 individual to perform domestic work in the private residence of a  
38 family member; or who is 18 years of age or older and resides in a  
39 private residence in which an individual performs domestic work.

40 (cf: P.L.2019, c.39, s.2)

41  
42 10. Section 5 of P.L.2019, c.39 (C.10:5-12.11) is amended to  
43 read as follows:

44 5. Any person claiming to be aggrieved by a violation of  
45 P.L.2019, c.39 (C.10:5-12.7 et seq.) may initiate suit in Superior  
46 Court. An action pursuant to this section shall be commenced  
47 within **[two]** three years **[next]** after the cause of any such action  
48 shall have accrued. All remedies available in common law tort

1 actions shall be available to prevailing plaintiffs. These remedies  
2 are in addition to any provided by P.L.2019, c.39 (C.10:5-12.7 et  
3 seq.) or any other statute. A prevailing plaintiff shall be awarded  
4 reasonable **[attorney] attorney's** fees and costs.  
5 (cf: P.L.2019, c.39, s.5)  
6

7 11. Section 12 of P.L.1945, c.169 (C.10:5-13) is amended to  
8 read as follows:

9 12. a. (1) Any person claiming to be aggrieved by an unlawful  
10 employment practice or an unlawful discrimination may, personally  
11 or by an attorney-at-law, make, sign, and file with the division a  
12 verified complaint in writing which shall state the name and address  
13 of the person, employer, labor organization, employment agency,  
14 owner, lessee, proprietor, manager, superintendent, or agent alleged  
15 to have committed the unlawful employment practice or unlawful  
16 discrimination complained of and which shall set forth the  
17 particulars thereof and shall contain such other information as may  
18 be required by the division. Such complaint shall be filed with the  
19 division or in any municipal office pursuant to P.L.1945, c.169  
20 (C.10:5-1 et seq.) within one year after the alleged unlawful  
21 employment practice or unlawful discrimination based on any other  
22 category protected by P.L.1945, c.169 (C.10:5-1 et seq.). Upon  
23 receipt of the complaint, the division shall notify the complainant  
24 on a form promulgated by the director of the division and approved  
25 by the Attorney General of the complainant's rights under  
26 P.L.1945, c.169 (C.10:5-1 et seq.), including the right to file a  
27 complaint in the Superior Court to be heard before a jury; of the  
28 jurisdictional limitations of the division; and any other provisions of  
29 P.L.1945, c.169 (C.10:5-1 et seq.), without interpretation, that may  
30 apply to the complaint. The Commissioner of Labor and Workforce  
31 Development, the Attorney General, the director, or the  
32 Commissioner of Education may, in like manner, make, sign, and  
33 file such complaint. Any employer whose employees, or some of  
34 them, refuse, or threaten to refuse to cooperate with the provisions  
35 of P.L.1945, c.169 (C.10:5-1 et seq.), may file with the division a  
36 verified complaint asking for assistance by conciliation or other  
37 remedial action.

38 (2) Any complainant, including any person claiming to be  
39 aggrieved by an unlawful employment practice or an unlawful  
40 discrimination, the Attorney General, the director, the  
41 Commissioner of Labor and Workforce Development, or the  
42 Commissioner of Education, may initiate suit in Superior Court  
43 under P.L.1945, c.169 (C.10:5-1 et seq.) without first filing a  
44 complaint with the division or any municipal office. Any such  
45 action, other than an action by the Attorney General or the director,  
46 shall be commenced within three years after the cause of that action  
47 shall have accrued. In such proceedings:

1 (a) Upon the application of any party, a jury trial shall be  
2 directed to try the validity of any claim under P.L.1945, c.169  
3 (C.10:5-1 et seq.) specified in the suit.

4 (b) All remedies available in common law tort actions shall be  
5 available to prevailing plaintiffs, and if the Attorney General or the  
6 director is a prevailing plaintiff, those remedies shall be available  
7 on behalf of named or unnamed victims. If the suit seeks relief for  
8 one or more unnamed members of a protected class, the Attorney  
9 General or the director shall have the discretion to settle the suit on  
10 such terms as the Attorney General or the director deems  
11 appropriate. The injunctive relief set forth in section 16 of  
12 P.L.1945, c.169 (C.10:5-17) shall also be available to prevailing  
13 plaintiffs. These remedies are in addition to any other provided by  
14 P.L.1945, c.169 (C.10:5-1 et seq.) or any other statute.

15 (c) In addition to the remedies set forth in subparagraph (b) of  
16 this paragraph, the Attorney General or director may seek and  
17 obtain from the Superior Court penalties pursuant to section 2 of  
18 P.L.1983, c.412 (C.10:5-14.1a). In the alternative, in lieu of these  
19 penalties, the Attorney General or director may seek and obtain  
20 punitive damages payable to the State upon a finding that the  
21 provisions of P.L.1995, c.142 (C.2A:15-5.9 et al.) are satisfied.

22 Prosecution of such suit in Superior Court under P.L.1945, c.169  
23 (C.10:5-1 et seq.) shall bar the filing of a complaint with the  
24 division or any municipal office during the pendency of any such  
25 suit.

26 (d) If a jury or court determines that an employer has committed  
27 an unlawful employment practice prohibited by subsection r. or t. of  
28 section 11 of P.L.1945, c.169 (C.10:5-12), the judge shall award  
29 three times any monetary damages to the person or persons  
30 aggrieved by the violation.

31 (e) Notwithstanding the provisions of section 6 of  
32 P.L.1979, c.404 (C.10:5-27.1), if the Attorney General or the  
33 director is a prevailing plaintiff, the court shall award reasonable  
34 attorney's fees and litigation and investigation costs.

35 b. At any time after 180 days from the filing of a complaint  
36 with the division, a complainant may file a request with the division  
37 to present the action personally or through counsel to the Office of  
38 Administrative Law. Upon such request, the director of the division  
39 shall file the action with the Office of Administrative Law,  
40 provided that no action may be filed with the Office of  
41 Administrative Law where the director of the division has found  
42 that no probable cause exists to credit the allegations of the  
43 complaint or has otherwise dismissed the complaint.

44 c. A party to an action based upon a violation of  
45 P.L.1945, c.169 (C.10:5-1 et seq.) shall mail a copy of the initial  
46 pleadings or claims, amended pleadings or claims, counterclaims,  
47 briefs, and legal memoranda to the division at the same time as  
48 filing such documents with the Office of Administrative Law or the

1 court. Upon application to the Office of Administrative Law or to  
2 the court wherein the matter is pending, the division shall be  
3 permitted to intervene.

4 (P.L.2019, c.436, s.5)

5

6 12. Section 17 of P.L.1945, c.169 (C.10:5-18) is amended to  
7 read as follows:

8 The Attorney General shall establish rules of practice to govern,  
9 expedite and effectuate the foregoing procedure and **[his]** the  
10 Attorney General's own actions thereunder. Any complaint filed in  
11 the division or in any municipal office pursuant to this act must be  
12 so filed within **[180 days]** one year after the alleged act of  
13 discrimination or from the discovery of the alleged act of  
14 discrimination.

15 (cf: P.L.1979, c.404, s.4)

16

17 13. This act shall take effect of the first day of the third month  
18 following enactment.

19

20

21

#### STATEMENT

22

23 This bill makes it unlawful discrimination in violation of the  
24 "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.)  
25 to subject an individual to unlawful harassment, because of the  
26 individual's sex or other characteristic protected under that law.

27 The bill sets standards and procedures for determining when  
28 unlawful harassment occurs, both for cases of unlawful employment  
29 practices and for cases of unlawful discrimination.

30 For a claim that harassment is an unlawful employment practice  
31 based on a hostile work environment, determining whether unlawful  
32 harassment has occurred is based on factors which include whether  
33 the harassing conduct was sufficiently severe or pervasive to create  
34 an intimidating, hostile, or offensive work environment, based on  
35 the totality of the circumstances, including the cumulative effect of  
36 all incidents of harassing conduct affecting all workers in a  
37 workplace, regardless of whether or not the conduct involved direct  
38 physical contact or threats or loss of job benefits.

39 For a claim that harassment is an unlawful discrimination based  
40 on a hostile environment in housing, a school, or other place of  
41 public accommodation, determining whether unlawful harassment  
42 has occurred is based on the same factors as they would apply to  
43 such discrimination.

44 The bill requires employers to establish written  
45 nondiscrimination workplace policies to prevent unlawful  
46 discrimination and harassment, which explain the policies, and  
47 stipulate procedures and remedies for violations. The Division on  
48 Civil Rights is directed to create a model nondiscrimination policy

1 that complies with the requirements of the bill and can be adopted  
2 by an employer with fewer than 50 employees, and another model  
3 policy specifically for employers of domestic workers.

4 The bill requires an employer to provide interactive training to  
5 all supervisory employees and all other employees regarding the  
6 prevention of unlawful discrimination and harassment in the  
7 workplace, and sets standards for the training and the  
8 responsibilities of supervisors under the bill.

9 The bill also sets requirements for each employer with 50 or  
10 more employees regarding the collection and reporting to the  
11 division by an employer of data regarding complaints of violations  
12 of the provisions of the bill.

13 The bill extends the protections of the Law Against  
14 Discrimination to cover domestic workers.

15 The bill sets or extends the periods of time in which certain  
16 actions regarding unlawful discrimination may be taken.