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State Resources

New Jersey

Division on Civil Rights

<https://www.njoag.gov/about/divisions-and-offices/division-on-civil-rights-home/>

Reviewing Your

NEW JERSEY

Job Offer

Federal Resources

Equal Employment

Opportunity Commission

<http://www.eeoc.gov>

Does your job offer require that you sign a non-compete agreement?

There is no New Jersey law that generally governs non-compete agreements or requires an employee to sign a non-compete agreement yet, although a sweeping law putting strict limits on such agreements was under consideration in the New Jersey legislature in mid-2021. However, employers can require an employee to sign a non-compete agreement as a term and condition of employment (except for lawyers or psychologists). However, a non-compete agreement is only enforceable if it: 1) is necessary to protect the employer's legitimate interests, 2) does not impose an undue hardship on the former employee, 3) does not harm the public interest, and 4) is reasonable in the length of the restricted period and geographic scope. Courts consider factors such as whether an employee was terminated or resigned, whether an employer is seeking to protect proprietary information or business relationships or simply trying to hinder ordinary competition, and the impact on an employee's ability to find new work in their field, among others. An employer has the burden of proof to show that the non-compete restriction is reasonable, and courts may strike or modify aspects or specific terms of a non-compete agreement to make it reasonable and/or enforceable. Employees should carefully read any non-compete or non-solicit agreements they are asked to sign to determine the possible impact on future employment and to anticipate any future issues (such as protecting or exempting customer or business relationships they had before joining an employer).

Does your salary match the salary of your co-workers?

Under the New Jersey Equal Pay Act (NJEPA), employees should not be paid less than others who perform "substantially similar" work on the basis of sex/gender, gender identity, race, color, national origin, religion, age, disability, pregnancy, marital or domestic partner status, affectional or sexual orientation, or other specified characteristics. Effective January 1, 2020, employers are prohibited from asking for an employee's salary history, and cannot even attempt to prompt an employee to voluntarily share such information. Under the NJEPA, employers cannot retaliate against employees for making complaints related to pay disparities or equity, for asking for information regarding equal pay concerns, or for discussing information regarding compensation or pay differentials with coworkers, attorneys or government authorities. Differences in pay among employees in substantially similar positions may be permitted on the basis of a legitimate seniority or merit system or other legitimate, bona fide factors.

Assuming your employment is "at will," can you negotiate for contractual protections?

Yes, although it is unusual for employers to make any contractual guarantees of severance or a term of employment except for high-ranking executives. A New Jersey employer is under no obligation to provide you with severance or other contractual protections under the law (unless the position is covered by a union-negotiated collective bargaining agreement). However, where special circumstances are present, negotiating for and/or requesting certain assurances regarding compensation or how an exit would work may be advisable. Employees who are joining an organization may be able to obtain job accommodations for a disability or child care, guarantees regarding signing bonuses or first-year compensation, a carve-out for certain business relationships from a non-compete or non-solicit, or other specific terms and conditions of employment. Any change to an employee's "at will" employment status (that an employee or employer can end the employment relationship at any time for any or no reason) will rarely if ever be agreed to, however. Employees in highly skilled positions often have some leverage and employers may have room to negotiate certain terms and conditions, but certain aspects of employment, such as employment "at will" or the terms of benefits plans, may be beyond the discretion of a company representative to change.

Have you properly excluded your individual inventions prior to accepting your job offer?

Under New Jersey law, any employment contract that provides an employee must sign over rights to an invention to an employer will not apply to inventions developed on the employee's own time and without using the employer's equipment, facilities or information. Any inventions that relate to the employer's business or its anticipated research and development or which resulted from work done by the employee will not be exempted from such contracts, however. In addition, employers may require disclosure of an employee's inventions developed before and while working for the employer. Such agreements also will commonly require employees to identify any and all inventions and other intellectual property (IP) to which they intend to retain ownership rights, although some agreements will give employers license to use those inventions or IP as well. The terms and conditions of such agreements can differ between employers and may be negotiable to ensure protection of projects started before, during, and after employment. In the event that an employee has an invention or IP that they wish to protect from an employer's claim or infringement, they are well-advised to seek counsel from an attorney.

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Does your job offer require that you sign a forced arbitration agreement?

Although New Jersey has a law prohibiting employers from requiring employees to resolve discrimination, harassment or retaliation claims covered by the New Jersey Law Against Discrimination (NJLAD) through arbitration rather than in court, that law has been found to be preempted by the Federal Arbitration Act (FAA). However, a federal law amending the FAA in early 2022 prohibits employers from requiring that employees file legal claims regarding sexual assault or sexual harassment in arbitration rather than in court. Therefore, as a term and condition of employment, a New Jersey employer may still require an employee to enter into an arbitration agreement regarding most types of employment-related claims. Entering into such an agreement may result in the waiver of the ability to pursue a claim in the applicable court of law, waive a right to a trial by jury and the right to join a class of plaintiffs, require the employee to split the cost of arbitration with the employer, or even put other limits on how a claim can be litigated (though certain restrictions could be found invalid under applicable law). It is important to thoroughly read an arbitration agreement and understand which rights may be waived and which types of claims are covered by the agreement. Also, as a prospective employee, you may inquire whether the employer will allow you to opt-out of the arbitration process, thus providing you the opportunity to pursue a claim in the courts and utilizing the full range of legal right and procedural mechanisms available under applicable law. The New Jersey law prohibiting forced arbitration of various employment claims also prohibits retaliation against an employee for refusing to sign an arbitration agreement, but it is unclear whether that part of the law also would be found to be preempted by federal law.

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