

The New Jersey Law Against Discrimination in the Workplace



TRAINING RESOURCES

Statistics, Studies and Cases Referred to in the Training

- Committees with Implicit Biases Promote Fewer Women When They Do Not Believe Gender Bias Exists (*Nature Human Behaviour*, 2019), [nature.com/articles/s41562-019-0686-3](https://www.nature.com/articles/s41562-019-0686-3)
- EEOC Charge Receipts for New Jersey (discrimination charges filed, 2009-2021), <https://www.eeoc.gov/statistics/enforcement/charges-by-state/NJ>
- EEOC Charge Statistics (charges of workplace discrimination, 1997-2021), <https://www.eeoc.gov/data/charge-statistics-charges-filed-eeoc-fy-1997-through-fy-2021>
- Glassdoor Diversity and Inclusion Study (2019), [glassdoor.com/about-us/diversity-inclusion-2019](https://www.glassdoor.com/about-us/diversity-inclusion-2019)
- *Griggs v. Duke Power Co.* (1971), [oyez.org/cases/1970/124](https://www.oyez.org/cases/1970/124)
- *Harold Hansen v. Rite Aid Corporation* (2018), [law.justia.com/cases/new-jersey/appellate-division-unpublished/2018/a4750-16.html](https://www.law.justia.com/cases/new-jersey/appellate-division-unpublished/2018/a4750-16.html)
- Median Weekly Earnings of Full-Time Wage and Salary Workers in the United States in 2020, by Gender and Ethnicity, [statista.com/statistics/185409/median-weekly-earnings-of-full-time-wage-and-salary-workers-by-gender-and-ethnicity](https://www.statista.com/statistics/185409/median-weekly-earnings-of-full-time-wage-and-salary-workers-by-gender-and-ethnicity)
- Meta-Analysis of Field Experiments Shows No Change in Racial Discrimination in Hiring Over Time (*PNAS*, 2017), [pnas.org/content/114/41/10870.full](https://www.pnas.org/content/114/41/10870.full)

Videos Shown in the Training

- *Black Professionals Face Discrimination in the Workplace*, [youtube.com/watch?v=hSwQ3fgQgJs](https://www.youtube.com/watch?v=hSwQ3fgQgJs)
- *Disclosing a Disability to Obtain an Accommodation*, [youtube.com/watch?v=E-AdnNcoU3k](https://www.youtube.com/watch?v=E-AdnNcoU3k)
- *Good Wife Job Discrimination Ethics Clip*, [youtube.com/watch?v=ZH-JNggsoPO](https://www.youtube.com/watch?v=ZH-JNggsoPO)
- *The Job Interview*, [youtube.com/watch?v=T_2TsJOqe8I&t=10s](https://www.youtube.com/watch?v=T_2TsJOqe8I&t=10s)
- *Just Belonging: Finding the Courage to Interrupt Bias*, [youtube.com/watch?v=DIf43L6hNkM](https://www.youtube.com/watch?v=DIf43L6hNkM)
- *Lilly Ledbetter: The Story Behind Her Equal Pay Fight*, [youtube.com/watch?v=K1LSW4GPuAc](https://www.youtube.com/watch?v=K1LSW4GPuAc)
- *Muslim Woman Sues Company After Facing Religious Discrimination*, [youtube.com/watch?v=YUkEgb15e5E&t=16s](https://www.youtube.com/watch?v=YUkEgb15e5E&t=16s)
- *North Country - Resignation Effective Immediately*, [youtube.com/watch?v=yPHYjeHk1YM](https://www.youtube.com/watch?v=yPHYjeHk1YM)
- *Racist 'Joke' by Supervisor Causes Restaurant Employee to Quit*, [youtube.com/watch?v=VUmdq9c9tKQ](https://www.youtube.com/watch?v=VUmdq9c9tKQ)

Additional Resources

- DCR Anti-Discrimination Trainings, [njoag.gov/about/divisions-and-offices/division-on-civil-rights-home/education-and-training-unit/etu-trainings](https://www.njoag.gov/about/divisions-and-offices/division-on-civil-rights-home/education-and-training-unit/etu-trainings)
- NJBIAS (to file a complaint with DCR), [njoag.gov/about/divisions-and-offices/division-on-civil-rights-home/division-on-civil-rights-file-a-complaint](https://www.njoag.gov/about/divisions-and-offices/division-on-civil-rights-home/division-on-civil-rights-file-a-complaint)



- Federal Laws Prohibiting Job Discrimination Questions and Answers, [eeoc.gov/fact-sheet/federal-laws-prohibiting-job-discrimination-questions-and-answers](https://www.eeoc.gov/fact-sheet/federal-laws-prohibiting-job-discrimination-questions-and-answers)
- Bill A822, New Jersey Domestic Workers' Bill of Rights Act, https://www.njleg.state.nj.us/bill-search/2022/A822/bill-text?f=A1000&n=822_S3
- NFJLA FAQ: [New-Jersey-Family-Leave-Act-Frequently-Asked-Questions.pdf \(njoag.gov\)](https://www.njoag.gov/wp-content/uploads/2021/04/fact_BRST.pdf)
- DCR Fact Sheets, [njoag.gov/about/divisions-and-offices/division-on-civil-rights-home/division-on-civil-rights-resources](https://www.njoag.gov/about/divisions-and-offices/division-on-civil-rights-home/division-on-civil-rights-resources)
 - Accommodations for Pregnancy and Breastfeeding at Work, [njoag.gov/wp-content/uploads/2021/04/fact_BRST.pdf](https://www.njoag.gov/wp-content/uploads/2021/04/fact_BRST.pdf)
 - Civil Rights and COVID-19, [njoag.gov/wp-content/uploads/2021/09/fact_COVID-19.pdf](https://www.njoag.gov/wp-content/uploads/2021/09/fact_COVID-19.pdf)
 - Diane B. Allen Equal Pay Act, [njoag.gov/wp-content/uploads/2021/04/fact_EqualPay.pdf](https://www.njoag.gov/wp-content/uploads/2021/04/fact_EqualPay.pdf)
 - Protections from Discrimination or Harassment in Employment Based on Gender Identity or Expression, [njoag.gov/wp-content/uploads/2021/03/fact_LGBTQI_Employ.pdf](https://www.njoag.gov/wp-content/uploads/2021/03/fact_LGBTQI_Employ.pdf)
 - Protections from Sexual Harassment in Employment Under New Jersey Law, [njoag.gov/wp-content/uploads/2021/03/fact_SH_Employment.pdf](https://www.njoag.gov/wp-content/uploads/2021/03/fact_SH_Employment.pdf)
 - Race Discrimination in Employment, [njoag.gov/wp-content/uploads/2021/06/fact_Race-Disc-Employment.pdf](https://www.njoag.gov/wp-content/uploads/2021/06/fact_Race-Disc-Employment.pdf)

SUMMARY OF TRAINING CONCEPTS

The New Jersey Law Against Discrimination (LAD)

- The LAD prohibits discrimination and harassment at work based on 20 protected characteristics.
 - Race
 - Color
 - Ancestry
 - National Origin
 - Nationality
 - Religion/Creed
 - Age
 - Sexual Orientation
 - Sex
 - Gender Identity
 - Gender Expression
 - Pregnancy or Breastfeeding
 - Familial Status
 - Marital Status
 - Civil Union Status
 - Domestic Partnership Status
 - Armed Forces
 - Disability
 - Genetic information
 - Atypical Hereditary Cellular or Blood Trait
- Anyone who believes their rights under the LAD have been violated may file a complaint with DCR within 180 days of the incident.
- The LAD applies to almost all employers in NJ; there does not need to be a minimum number of employees.
- The employer does not need to have a base of operations in NJ; the employee works or worked in NJ.

Employment Discrimination

The LAD protects an employee from discrimination when it involves practices including:

- Unfair treatment on the basis of a protected characteristic;
- Harassment by supervisors, co-workers or others on the basis of a protected characteristic;
- Denial of a reasonable workplace accommodation needed due to religious beliefs, disability or pregnancy or breastfeeding;
- Improper questions about or disclosure of genetic or medical information;
- Retaliation in response to complaints about job discrimination or assistance with a job discrimination proceeding;
- Discriminatory practices that occur during any part of the employment process – hiring, job assignment, promotion, compensation, termination, etc.

Disparate Treatment

To establish a case of discrimination based disparate treatment, a complainant must show:

- They are a member of a protected class;
- They suffered an adverse employment action (e.g., failure to hire, denial of a promotion, termination);

- Their membership in the protected class was a substantial motivating factor for respondent's adverse employment action.



Harassment

Harassment is unlawful and may constitute a hostile workplace environment when:

- The alleged harasser engaged in unwanted harassing conduct;
- The conduct would not have occurred but for the employee's protected characteristic, e.g. sex, race, etc.;
- The conduct is severe *or* pervasive enough to make a reasonable person of the target's protected characteristic believe the conditions of employment had been altered and the working environment had become hostile, intimidating, or abusive.

Liability

When harassment occurs, an employer is liable for the actions of its supervisors within the scope of their employment, meaning that the behavior occurred while the supervisor was carrying out authorized duties.

- An employer can avoid liability if it can prove that:
 - It reasonably tried to prevent and promptly correct the harassing behavior.
 - The employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer, such as reporting any harassing behavior in accordance with an impartial complaint procedure or process.
- To establish employer liability for non-supervisory employees and third parties, it must be demonstrated that the employer:
 - Knew or should have known about the conduct;
 - Had some degree of control over the harasser's conduct;
 - Failed to take prompt and appropriate corrective action to stop or prevent the discrimination.
- An employer can be held liable for retaliation when it fails to take action against employees who treat another employee adversely after that employee reports unlawful conduct.
- Individual supervisors can be held personally liable for "aiding and abetting" discrimination by an employer if the individual:
 - Performed a wrongful act that caused an injury;
 - Was generally aware of his or her role as part of an overall illegal activity;
 - Knowingly and substantially assisted in the principal violation.

Accommodation

Accommodation most commonly applies to three protected characteristics:

- **Religion:** Employers may not impose practices that require an employee to violate or forgo a sincerely held religious practice, observance or belief as a condition of obtaining or retaining employment unless granting a religious accommodation would be an undue hardship on their operations.
- **Disability:** The law requires employers to provide changes in the work environment or work rules that make it possible for a person with a disability to perform the essential functions of the job unless doing so would be an undue hardship on their operations.
- **Pregnancy and Breastfeeding:** The Pregnant Workers Fairness Act (2014) requires employers to grant reasonable accommodation for pregnancy, childbirth, related medical conditions and breastfeeding that enable an employee to continue to work while maintaining a healthy pregnancy or return to work after giving birth unless doing so would be an undue hardship on their operations.

Examples of accommodation:

- **Changes involving time,** e.g. modified or flexible work schedules (including part-time); change of shifts; flexible break and rest times; floating holidays; allowing missed time to be made up; allowing leaves of absence
- **Changes to job function,** e.g. job reassignments; job restructuring; temporary or permanent lateral transfers
- **Changes to physical space,** e.g. making facilities accessible and usable by people with disabilities; designating or setting up a room for pumping; creating accessible parking

- Changes involving assistive technologies and practices, e.g. purchasing assistive devices or software; modifying existing equipment; making an outside aid or service available; offering assistance with manual labor; providing alternate formats for materials and communications
- Other changes to policies and procedures, e.g. updating codes for dress and grooming; altering test and training materials; making space for service animals



Retaliation

The NJ LAD prohibits employers from retaliating against employees who speak out against unlawful discrimination. Employees have the right to:

- oppose practices they reasonably believe violate the LAD (even if the act does not actually violate the LAD);
- file complaints, either internally or with external agencies, such as DCR and the EEOC, related to LAD violations; and
- participate in investigations and testify in proceedings in which an employer is accused of violating the LAD without being subject to any type of retaliatory action by the employer.

Wage Discrimination

New Jersey's Diane B. Allen Equal Pay Act (2018) expands upon existing equal pay laws:

- The Act prohibits pay discrimination based not only on sex, but also race, national origin, sexual orientation, gender identity or expression, age, disability and other protected characteristics.
- The Act prohibits an employer from paying any employee who is a member of a protected class less than what it pays an employee who is not a member of that protected class for "substantially similar work." Substantially similar work is a composite of skill, effort, and responsibility.
- The Act applies to all forms of compensation, including salary, bonuses, health benefits and pension contributions.
- A complainant may obtain up to six years of back pay if the pay violation occurred continuously during that time.

The New Jersey Law Against Discrimination: Cultivating a Discrimination-Free Workplace



GLOSSARY OF TERMS

1. **Accommodation:** An adjustment to job duties, tasks, responsibilities or work environment for a person or group of people with unique requirements due to a protected characteristic, such as disability, religion and pregnancy and breastfeeding.
2. **Adverse Employment Action:** An action taken by an employer that negatively affects the terms, conditions or privileges of employment. Common examples include failure to hire, failure to promote, demotion, and termination.
3. **Disparate Impact:** A form of discrimination that occurs when a policy, procedure or practice is neutral on its face, but has an adverse effect on one or more protected classes within an organization and is not necessary to achieve a substantial, legitimate, nondiscriminatory interest of the employer.
4. **Disparate Treatment:** Intentional discrimination against an employee based on a protected characteristic.
5. **Explicit Bias:** Attitudes and beliefs about a person or group on a conscious level.
6. **Harassment:** Unwelcome behavior, based on a protected characteristic, that demeans, threatens or offends others.
7. **Hostile Work Environment:** A workplace in which harassment is severe or pervasive enough to make a reasonable person of the employee's protected characteristic believe the conditions of employment had been altered and the working environment had become hostile, intimidating, or abusive.
8. **Implicit Bias:** Attitudes and beliefs about a person or group that people hold without conscious knowledge, and that may be inconsistent with one's conscious thoughts and feelings.
9. **Interactive Process:** A dialogue, generally initiated by an employer, in response to an employee's request for a reasonable accommodation because of religion, disability, or pregnancy/breastfeeding; the employer and employee explore together and in good faith accommodations that are effective and do not impose an undue burden on the employer.
10. **Protected Categories:** A group of people who share a common characteristic and are legally protected from discrimination on the basis of that characteristic. In New Jersey, there are more than twenty protected categories.
11. **Reasonable Person:** Refers to a hypothetical individual who exercises appropriate judgement and behavior, and is used as a legal standard used to determine liability; e.g. in a discrimination case, the court considers whether a "reasonable person" of the target's protected characteristic would believe that the conduct in question created a hostile work environment.
12. **Retaliation:** Punishment of an employee by an employer for engaging in legally protected activity, such as filing a discrimination complaint; *associational retaliation* occurs when an employee is penalized because of their relationship with someone who engaged in a protected activity.
13. **Similarly Situated:** Meaning "alike in relevant ways," this concept is used in discrimination cases to show that a complainant was treated differently, based on a protected characteristic, from comparable individuals in the workplace who were otherwise alike in relevant ways.
14. **Undue Hardship:** Refers to an accommodation request that requires significant difficulty or expense as it relates to the employer's operation.