

## **Alert** | Labor & Employment



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### **New Jersey Federal Court Declares State’s New Equal Pay Act Does Not Apply Retroactively – Will State Courts Agree?**

On Jan. 15, 2019, U.S. District Judge William J. Martini ruled that New Jersey’s newly minted Diane B. Allen Equal Pay Act (NJEPa), enacted April 24, 2018, and by its terms effective July 1, 2018, “is not retroactively applicable to conduct occurring prior to its effective date.” *Perrotto v. Morgan Advanced Materials, PLC*. While Judge Martini’s well-reasoned decision is for employers a welcome early contribution to NJEPa jurisprudence, it remains to be seen whether New Jersey state courts take a different view.

#### **Plaintiff Claimed Protection for Pre-NJEPa Pay Disparity and Retaliation Claims**

Plaintiff Darla Perrotto had been employed by defendants as Controller/Human Resources from June 2013 “until her termination on April 5, 2018.” Plaintiff alleged that, during her employment, defendants (i) paid female employees less than their male coworkers for performing “substantially similar work,” and (ii) retaliated against plaintiff for complaining about this alleged pay disparity. She filed suit on July 27, 2018, seeking redress under the NJEPa.

## Court Determines NJEPA's Applicability Is Strictly Prospective

Because the conduct of which plaintiff complained occurred several months before the NJEPA's effective date, the District Court held that the statute should not apply retroactively to plaintiff's NJEPA claims. Judge Martini began with the "settled rules of statutory construction" that, "rest[ing] on 'long-held notions of fairness and due process[,]' counsel "prospective rather than retroactive application of new legislation." The court noted that, under recent New Jersey Supreme Court precedent, a party may overcome "the strong presumption against retroactivity" in one of three ways: (i) by showing a legislative intent for retroactive application, (ii) by showing the enactment is "curative," or (iii) by showing the "expectations of the parties" warrant retroactive application. Respecting the NJEPA, Judge Martini found "no exception applies here."

The court easily found the first route barred, holding that because the Legislature "specifically postponed the effective date" until more than two months after the NJEPA became law, "the Legislature intended NJEPA to have prospective application only." The court equally rejected the third route, reasoning that "with three months between the complained-of conduct and when NJEPA became law," there is "no basis to support how the parties' reasonable expectations warrant invoking retroactivity."

The court likewise rejected plaintiff's argument that NJEPA is "curative," recognizing NJEPA as "a 'first of its kind' statute addressing pay equity for performing 'substantially similar work.'" (For additional background on the groundbreaking substance of the NJEPA and its expanded pay equality provisions, please see our GT Alerts of [April 2, 2018](#), and [September 6, 2018](#).) Pointing specifically to the NJEPA's new six-year limitations period and its mandatory imposition of treble damages, Judge Martini concluded "there lacks evidence showing the Legislature sought to explain or clarify existing law."

### Key Takeaways

*Perrotto* represents a logically sound application of long-established rules of statutory construction, and may help employers limit the NJEPA's immediate impact. However, while the decision is clearly persuasive, it remains to be seen whether New Jersey state courts will follow its compelling lead. Employers are thus well-advised to continue keeping a close eye on the developing case law – federal and state alike – under the nascent NJEPA.

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