



## **Guidance on Discrimination and Out-of-State Remote Workers** **May 2024**

This enforcement guidance<sup>1</sup> clarifies and explains how the New Jersey Office of the Attorney General and the Division on Civil Rights (DCR) apply the New Jersey Law Against Discrimination (LAD) to discrimination by New Jersey employers against their employees who reside and work remotely outside of New Jersey.<sup>2</sup> The LAD prohibits employers from discriminating on the basis of actual or perceived sexual orientation, gender, gender identity, gender expression, age, race, color, national origin, ancestry, religion, disability, and other protected characteristics.<sup>3</sup> The rise in remote work following the COVID-19 pandemic does not change how the LAD applies to New Jersey employers, and DCR remains fully committed to enforcing the LAD and safeguarding the rights of all employees who work in-person or remotely for New Jersey employers.

The COVID-19 pandemic fundamentally altered many aspects of society. One enduring change has been an increase in employees who perform their jobs remotely, also known as telework.<sup>4</sup> Many employees work, either full- or part-time, from a location different from their employer’s physical workplace. Indeed, some companies now operate on a fully remote basis, meaning that they do not maintain any office space and require their employees to work remotely full-time.<sup>5</sup> As a result of these changes, a subset of New Jersey employees now telework from outside New Jersey. With changing workplace arrangements, this brief enforcement guidance clarifies the protections the LAD affords individuals who work for New Jersey-based employers and are engaged in remote work outside of New Jersey.

By its terms, the LAD does not protect only New Jersey residents. For instance, the LAD provides that “*all persons shall have the opportunity to obtain employment . . . without discrimination.*”<sup>6</sup> The LAD’s definition of

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<sup>1</sup> The purpose of this guidance document is to clarify and explain DCR’s understanding of existing legal requirements in order to facilitate compliance with the LAD. This guidance document does not impose any new or additional requirements that are not included in the LAD, does not establish any rights or obligations for any person, and will not be enforced by DCR as a substitute for enforcement of the LAD. This document does not provide legal advice and should not be treated as providing legal advice. Employers, employees, and others with questions about the LAD are encouraged to speak with a qualified attorney to address their specific questions.

<sup>2</sup> Even though the LAD applies in this context, there could be cases where, as a matter of choice of law, a court would not apply New Jersey law to a multi-state dispute. *See generally Schulman v. Zoetis, Inc.*, No. 22-1351, 2023 WL 4539476, at \*9-10 (D.N.J. July 14, 2023) (describing a two-step analysis of first considering the applicability of the LAD to remote workers and second assessing the legal differences between New Jersey and the second state’s law and the choice-of-law rules of New Jersey).

<sup>3</sup> N.J.S.A. 10:5-12(a).

<sup>4</sup> A recent article reports that about 20 percent of workers aged 18 to 64 worked remotely either full- or part-time in 2023. Ben Casselman, Emma Goldberg, Ella Koeze, “Who Still Works From Home?” *New York Times*, (March 8, 2024), [Work From Home Data Shows Who’s Fully Remote, Hybrid and in Person - The New York Times \(nytimes.com\)](https://www.nytimes.com/2024/03/08/us/economy/remote-work-statistics-2024.html).

<sup>5</sup> By one estimate, nearly 13 percent of employees nationally work remotely full-time, and about 16 percent of companies operate fully remotely. Katherine Han, “Remote Work Statistics and Trends in 2024,” *Forbes Advisor*, (June 12, 2023), [Remote Work Statistics & Trends In \(2024\) – Forbes Advisor](https://www.forbes.com/advisor/remote-work-statistics/).

<sup>6</sup> N.J.S.A. 10:5-4 (emphasis added).

“person” is expansive, and it contains no geographic restriction on its scope.<sup>7</sup> Many of the LAD’s other substantive provisions similarly prohibit discrimination against “any person or group of persons,” a phrase that likewise contains no geographic restriction.<sup>8</sup> The LAD’s employment provisions, meanwhile, also prohibit employers, because of a protected characteristic “of *any individual*,” “to refuse to hire or employ or to bar or to discharge or require to retire . . . from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.”<sup>9</sup> That provision applies broadly to discrimination against “any individual,” no matter where the employee is located.<sup>10</sup>

Taken together, the substantive provisions of the LAD do not distinguish among victims of discrimination by New Jersey employers.<sup>11</sup> Whether an employee working for a New Jersey employer lives in New Jersey, commutes to work from another state, or works remotely from outside New Jersey, the LAD protects the right to a workplace free from discrimination and bias-based harassment.<sup>12</sup> Thus, any aggrieved employee, regardless of their residency or where they physically work, including those who work remotely full-time or part-time on a hybrid schedule, may seek redress for violations of the LAD by New Jersey employers.<sup>13</sup>

Legal precedent similarly supports the conclusion that the LAD can protect employees who perform their work outside of the State. In the leading New Jersey case, *Calabotta v. Phibro Animal Health Corp.*, the Appellate Division held that the LAD “can extend in appropriate circumstances to plaintiffs who reside or work outside of” New Jersey.<sup>14</sup> Specifically, the Appellate Division found that an employee who lived in Illinois and worked for an Illinois subsidiary of a New Jersey employer could bring a claim under the LAD for discrimination based on the employer’s alleged failure to consider him for a promotion to a position in New Jersey.<sup>15</sup> The Appellate Division held that the Legislature “has expressed an intention to allow certain nonresident plaintiffs to receive the benefits and protections of the NJLAD.”<sup>16</sup>

The U.S. District Court for the District of New Jersey relied on *Calabotta* in reaching the same conclusion in *Schulman v. Zoetis, Inc.*, No. 22-1351, 2023 WL 4539476, at \*3–4 (D.N.J. July 14, 2023). Based on *Calabotta*, the District of New Jersey court predicted that the New Jersey Supreme Court would extend the LAD to protect

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<sup>7</sup> N.J.S.A. 10:5-5(a). The full definition of “person” includes “one or more individuals, partnerships, associations, organizations, labor organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and fiduciaries.” *Id.*

<sup>8</sup> See e.g., N.J.S.A. 10:5-12(a), (f), & (g).

<sup>9</sup> N.J.S.A. 10:5-12(a).

<sup>10</sup> The LAD’s current definition of “employee” also includes no geographic limitation. N.J.S.A. 10:5-5(f). This definition will be eliminated as a result of the July 2024 implementation of the Domestic Workers’ Bill of Rights, which expands protection under the LAD to include domestic workers. S. 723/ A. 822 (2022).

<sup>11</sup> There is only one instance in which the LAD refers specifically to New Jersey residents: The preamble to the LAD provides that New Jersey has an interest in protecting its “inhabitants” from discrimination. N.J.S.A. 10:5-3. Nonetheless, in light of the specific terminology in the substantive provisions of the LAD—namely, the use of the terms “all persons” and “any person or group of persons”—DCR does not give weight to this prefatory wording, which conflicts with the broader language used throughout the LAD. See *Calabotta v. Phibro Animal Health Corp.*, 460 N.J. Super. 38, 63 (App. Div. 2019) (finding that because “the word ‘inhabitant’ does not appear at all in the operative provisions of the statute outside of the preamble . . . it does not cloud our reading of the unambiguous and broader operative provisions of the NJLAD”); see also *Trejevo v. Legal Cost Control, Inc.*, No. 1377-16, 2018 WL 1569640, at \*3 (App. Div. April 2, 2018) (finding that “limiting protection of the [LAD] to ‘inhabitants’ of this State would be an overly restrictive reading of a statute with an expressly broad purpose—the elimination of discriminatory conduct”).

<sup>12</sup> The same principle applies in the context of discrimination by places of public accommodation and housing providers.

<sup>13</sup> N.J.S.A. 10:5-13 (providing that “*any person* claiming to be aggrieved” may file a complaint); N.J.S.A. 10:5-8 (providing for a section within DCR to “receive, investigate, and act upon complaints alleging discrimination against *persons*”); N.J.S.A. 10:5-8.2 (providing for privileged communication when the Attorney General or DCR director bring an action for “relief for *an individual* who claims to be a victim of unlawful discrimination”).

<sup>14</sup> 460 N.J. Super. 38, 45 (App. Div. 2019).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 60.

an employee who worked remotely from New Hampshire for a New Jersey employer.<sup>17</sup> In reaching this conclusion, the court explained that the LAD is meant to be liberally construed to achieve its purpose of eliminating discrimination.<sup>18</sup> Indeed, as the New Jersey Supreme Court has stated, “the more broadly [the LAD] is applied, the greater its antidiscriminatory impact.”<sup>19</sup>

In short, the LAD’s protections extend broadly to workers who are employed by a New Jersey company, even if they work remotely in another state. While the LAD provides broad protection against discrimination by New Jersey employers, the LAD does not necessarily extend to individuals who work for an employer that is based in another state.<sup>20</sup> Where the LAD does not apply, federal laws and laws in other states may nonetheless still provide protection against discrimination.

While the nature of work continues to evolve, the LAD’s protections against discrimination by New Jersey employers remain robust. DCR will continue to construe the LAD’s protections in a manner consistent with its statutory purpose of eradicating discrimination and bias-based harassment in New Jersey. To find out more about the protections the LAD provides, go to [www.NJCivilRights.gov](http://www.NJCivilRights.gov). DCR also has several [resources](#) that provide an overview of the LAD.

If you believe you have faced discrimination in violation of the LAD, you can file a complaint with DCR by visiting [www.bias.njcivilrights.gov](http://www.bias.njcivilrights.gov) or calling 1-833-NJDCR4U (833-653-2748).

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<sup>17</sup> *Schulman*, 2023 WL 4539476, at \*10. The district court further analogized from New Jersey’s application of its Conscientious Employer Protection Act to protect out-of-state whistleblowers. *Id.* at \*5 (citing *Halliday v. Bioreference Lab’ys, Inc.*, No. 3219-19, 2022 WL 3051348 (App. Div. Aug. 3, 2022)).

<sup>18</sup> *Id.* at \*3–4; see also *Rampersad v. Dow Jones & Co., Inc. et al.*, No. 19-11733, 2020 WL 529212, at \*4 (D.N.J. Jan. 21, 2020) (finding that “the New Jersey Supreme Court would likely apply the NJLAD to out-of-state plaintiffs in some circumstances” and denying motion to dismiss LAD claim of employee who teleworked from Florida for a New Jersey company).

<sup>19</sup> *Nini v. Mercer Cty. Cmty. Coll.*, 202 N.J. 98, 115 (2010) (alterations in original) (citations omitted).

<sup>20</sup> The LAD’s protections may not extend, for example, to employees who work remotely in New Jersey for an employer in another state, or to employees who commute from New Jersey to work for an employer in another state. Rather, such employees must establish a nexus between their employer and New Jersey for the LAD to apply. *Buccilli v. Timby, Brown & Timby*, 283 N.J. Super. 6, 10–11 (App. Div. 1995); see *Kunkle v. Republic Bank, et. al.*, No. 21-20245, 2023 WL 4348688, at \*5–7 (D.N.J. July 5, 2023); *McGovern v. Southwest Airlines*, No. 12-3579, 2013 WL 135128, at \*1 (D.N.J. Jan. 8, 2013). *But see Doug Chul Kim v. Harte Hanks, Inc.*, 425 F. Supp. 246, 262 (S.D.N.Y. Dec. 2019) (denying motion to dismiss LAD claim brought by New Jersey teleworking employee against his Pennsylvania employer and finding that “[t]o the extent that a person is employed to work from his or her home office in New Jersey . . . he or she is employed in New Jersey”).