

2.24B WAGE DISPARITY UNDER THE NJLAD¹ (Approved 05/1991;
Revised 11/2019)

NOTE TO JUDGE

Section 1 of this charge is intended for claims of gender discrimination based on unequal pay for substantially equal work, which are subject to the general employment discrimination provision of the New Jersey Law Against Discrimination (“NJLAD”), *N.J.S.A.* 10:5-12(a), but it is **not** intended for claims of pay discrimination under the Diane B. Allen Equal Pay Act (New Jersey Equal Pay Act) (“NJEPA”), *N.J.S.A.* 10:5-12(t). *See Perrotto v. Morgan Advanced Materials*, Civ. No. 2:18-13825, 2019 U.S. Dist. LEXIS 6745, at *2 (New Jersey Equal Pay Act applies prospectively). Model Civil Jury Charge 2.24A should be used for claims brought under the New Jersey Equal Pay Act, *N.J.S.A.* 10:5-12(t).

Section 2 of this charge should be used for other claims of pay discrimination, which arise under the general employment discrimination provision of the NJLAD, *N.J.S.A.* 10:5-12(a) and not under the New Jersey Equal Pay Act, *N.J.S.A.* 10:5-12(t).

1. Substantially Equal Jobs

Plaintiff has asserted that her² employer violated the NJLAD by paying her lower wage than those paid to men for equal work.

¹ This charge was previously designated as 2.24. In 2018, the New Jersey Legislature passed the Diane B. Allen Equal Pay Act (“NJEPA”), which amends the New Jersey Law Against Discrimination by furthering and broadening the prohibition against pay discrimination because, or on the basis, of an employee’s inclusion in any protected class and is not limited to gender. A new charge, Model Civil Jury Charge 2.24A, was created in light of the NJEPA. In light of the new legislation, it was expected that this charge would have limited application going forward and was therefore redesignated as 2.24B.

² Note that the Federal EPA applies only to wage disparity as between the sexes. *See Grigoletti v. Ortho Pharmaceutical Corp.*, 118 *N.J.* 89, 100 (1990).

In order to establish an initial case of wage discrimination under the NJLAD, a woman must show that:

- a. The work she did was substantially equal to that performed by male employees; and
- b. She received a different rate of pay for this substantially equal work.

I charge you that substantially equal work is work “on jobs the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions.”³

If a plaintiff establishes these two elements by a preponderance of the evidence, the defendant employer has the burden of proving by a preponderance of the evidence that the wage disparity is the result of one of four facts:

- a. A *bona fide* seniority system, or
- b. a merit system, or
- c. a system that measures earnings by quantity or quality of production, or
- d. a differential based on any factor other than sex.

If defendant proves one of these factors by a preponderance of the evidence, you

³ See *Brobst v. Columbus Services International*, 824 F. 2d 271, 174 (3d Cir. 1987), citing *Corning Glass Works v. Brennan*, 417 U.S. 188, 195 (1974), citing 29 U.S.C. §206(d)(1).

must find in favor of defendant.⁴

2. Similar Jobs⁵

In order to establish an initial case of wage disparity or discrimination, a plaintiff must show that:

- a. [He/She] is a member of a protected class;
- b. [his/her] job was similar to the job of other persons who were not members of a protected class⁶; and
- c. [he/she] received lower wages than the persons who were not members of a protected class.

It is plaintiff's burden to prove each of these three elements by a preponderance of the evidence.

⁴ The *McDonnell-Douglas* methodology is not utilized in a Federal EPA claim or in an NJLAD claim based on substantially equal jobs. See *Grigoletti* at 100-110.

⁵ For a discussion of the differences between the proofs required in a Title VII (and by implication, on NJLAD) based wage disparity claim and those required in a Federal EPA Claim, see *Grigoletti v. Ortho Pharmaceutical Corp.*, 118 N.J. 89, 100-110 (1990).

⁶ This charge applies to claims of "similar jobs"; the charge relating to the Federal EPA applies to claims of "substantially equal" jobs.