

# Employment Law Monitor

INSIGHTS ON RECENT DEVELOPMENTS IN FEDERAL AND STATE LABOR & EMPLOYMENT MATTERS

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## **New Jersey Law Against Discrimination "Over 70 Exception" Does Not Cover Non-Renewal of an Employment Contract**

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According to the New Jersey Supreme Court in Nini v. Mercer County Community College (decided June 1, 2010), New Jersey employers can refuse to hire or promote individuals who are over 70 years of age on the basis of age, but will violate the New Jersey Law Against Discrimination ("LAD"), N.J.S.A. 10:5-1 *et seq.*, if the employer refuses to renew a contract for the same reason. LAD prohibits an employer from refusing to hire, firing or otherwise discriminating against an employee because of a protected category such as age. However, LAD contains what is known as the "over 70 exception", which provides that, "nothing herein contained shall be construed to bar an employer from refusing to accept for employment or to promote any person over 70 years of age..." N.J.S.A. 10:5-12(a). Thus, a New Jersey employer can refuse to hire or promote an individual who is over 70 years old on the basis of that individual's age without running afoul of LAD. The Court in Nini, however, held that the "over 70 exception" does not apply to the non-renewal of a contract, likening a non-renewal to a termination, which is unlawful, instead of a refusal to hire. In reaching this holding, the Court relied upon LAD's remedial nature and strong public policy of eradicating discrimination in the workplace.

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