

New Jersey Governor Bans Non-Disclosure Agreements for Harassment, Retaliation and Discrimination Claims

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New Jersey has joined the #MeToo movement as Governor Phil Murphy recently signed Senate Bill 121 into law. The new law prohibits employers from enforcing nondisclosure agreements against current or former employees who lodge any harassment, retaliation or discrimination claim. In addition, employers are now prevented from taking any retaliatory action against an employee who would refuse to enter into a now illegal nondisclosure agreement. The law also bans any contract provision that requires an employee to waive substantive or procedural rights or remedies relating to a claim of discrimination, retaliation or harassment. As a result of this legislative enactment, all settlement agreements entered into after March 18, 2019, resolving claims for harassment, discrimination or retaliation, as well as employment contracts, cannot contain any provisions which prevents the employee from revealing the details related to such claims. It is important to note that this law does not apply retroactively to settlements entered prior to March 18, 2019.

The law does provide that such language can remain enforceable against an employer, unless the employee publicly reveals sufficient details about the claim so that the employer is reasonably identifiable. Settlement agreements must now contain a bold, prominently placed notice reminding both employer and employee of these enforcement limitations. The new law does not apply to non-compete agreements or non-disclosure agreements pertaining to proprietary information such as trade secrets, business plans or customer information.

As a result of the new law, an employee now has the right to bring a civil action against an employer within two years of a violation, and if successful, the employee would be entitled to recover reasonable attorney fees and costs.

The stated purpose of this law as explained by its main sponsor Sen. Loretta Weinberg, D-Bergen, is to "help lift the secrecy that allows abusers to carry on abusing, and make our workplaces safer for everyone." It remains unclear whether the law will have this intended effect, or the impact on the ability of both employees and employers to reach quick and effective settlements. Regardless, employers must understand the new limitations of confidentiality in settlements of harassment, retaliation and discrimination claims. Similarly, employers must examine their employee onboarding documents, (e.g. confidentiality agreements and employment contracts) to assess whether same comply with the law. Finally, this change truly reinforces the need for employers to remain proactive in the implementation and enforcement of anti-harassment and discrimination policies in the workplace both to help eliminate such conduct and minimize the occurrence of such claims in the first instance.