

Washington's 'Silenced No More Act' Would Limit Use of Nondisclosure and Nondisparagement Provisions in Employment Agreements

Article By:

Brenda L. Bannon

Emma A. Healey

The Washington Legislature recently voted to send the [Silenced No More Act](#) (Engrossed Substitute House Bill [ESHB] 1795) to Governor Jay Inslee's desk for signature. As currently drafted, the proposed legislation would prohibit nondisclosure and nondisparagement provisions in agreements between employers and employees regarding "illegal acts of discrimination, harassment, retaliation, wage and hour violations, and sexual assault." The following provides a summary of the bill's key provisions.

Overview of the Legislation

When would a nondisclosure or nondisparagement clause be void and unenforceable?

ESHB 1795 provides that "[a] provision in an agreement by an employer and an employee not to disclose or discuss conduct, or the existence of a settlement involving conduct, that the employee *reasonably believed* under Washington state, federal, or common law to be illegal discrimination, illegal harassment, illegal retaliation, a wage and hour violation, or sexual assault, or that is recognized as against a clear mandate of public policy, is void and unenforceable." (Emphasis added.) ESHB 1795 does not define "reasonable belief."

What conduct is covered?

The legislation would apply to nondisclosure and nondisparagement provisions concerning "conduct that occurs at the workplace, at work-related events coordinated by or through the employer, between employees, or between an employer and an employee, whether on or off the employment premises."

How are employees defined?

The bill defines an employee as "a current, former, or prospective employee or independent

contractor.”

Which agreements are covered under the legislation?

The legislation applies to “employment agreements, independent contractor agreements, agreements to pay compensation in exchange for the release of a legal claim, or any other agreement between an employer and an employee.”

What about settlement amounts, trade secrets, and protected information?

Under the legislation, employers may still prevent the “disclosure of the amount paid in settlement of a claim.” Additionally, employers may still “protect[] trade secrets, proprietary information, or confidential information that does not involve illegal acts.”

What are the penalties and civil liability provisions?

Under ESHB 1795, employers may not “request or require that an employee enter into any agreement provision that is prohibited” by the act. An employer that violates the act may be “liable in a civil cause of action for actual or statutory damages of \$10,000, whichever is more, as well as reasonable attorneys’ fees and costs.”

What law applies?

Washington law applies to a “nondisclosure or nondisparagement provision in any agreement signed by an employee who is a Washington resident.”

Retroactive application?

The legislation would apply retroactively from its effective date “only to invalidate nondisclosure or nondisparagement provisions in agreements created before the effective date of [ESHB 1795] and which were agreed to at the outset of employment or during the course of employment.” The legislation allows “the recovery of damages only to prevent the enforcement” of the prohibited provisions. The act would not retroactively apply to nondisclosure or nondisparagement provisions “contained in an agreement to settle a legal claim.”

Does the legislation contain any repeal provisions?

The Silenced No More Act repeals the settlement agreement exception contained in [RCW 49.44.210](#), which was specifically limited in application to sexual assault and sexual harassment claims.

Key Takeaways

As drafted, the proposed Washington legislation appears to be broader than its California counterpart, also called the “[Silenced No More Act](#).” Unlike California’s law, Washington’s would not provide an exception for settlement agreements to resolve an employment discrimination–related claim that the employee has filed in court, before an administrative agency, in an alternative dispute resolution forum, or through the employer’s internal complaint process.

If the governor signs the bill into law, employers with Washington employees may wish to revise their settlement and severance agreement templates now in preparation for the law’s effective date, which

is yet to be determined. Employers also may wish to consider whether they wish to resolve and obtain settlement agreements for current litigation sooner rather than later so that ESHB 1795 does not apply to those agreements.

© 2025, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., All Rights Reserved.

National Law Review, Volume XII, Number 70

Source URL: <https://natlawreview.com/article/washington-s-silenced-no-more-act-would-limit-use-nondisclosure-and-0>