

# New York Expands Restrictions on Nondisclosure Agreements Related to Discrimination, Harassment, and Retaliation Claims

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New York State recently enacted laws to further restrict the use of nondisclosure agreements in connection with resolution of employment discrimination, harassment, and retaliation claims and extend the statute of limitations to file complaints with the state enforcement agency. The laws are aimed at providing additional protections to those claiming employment discrimination and harassment and promoting the transparency efforts of the #MeToo movement.

## Quick Hits

- S4516 prohibits liquidated damages clauses and forfeiture of consideration for breach of a nondisclosure or nondisparagement clause in nondisclosure agreements in connection with the settlement of certain discrimination, harassment, and unlawful retaliation claims.
- The law clarifies that, to be enforceable, a nondisclosure provision in a release must be at the employee's preference.
- A501 extends the limitations period for filing administrative complaints alleging discrimination from one year to three years.

On November 17, 2023, New York Governor Kathy Hochul signed into law [Senate Bill \(S\) 4516](#), which restricts the use of confidentiality clauses in certain employment-related releases unless the individual requests confidentiality. The amendments further invalidate releases that require employees to pay liquidated damages for violating nondisclosure or nondisparagement clauses, and prohibit employers from requiring employees to affirm that they were not subjected to any alleged discrimination or retaliation.

Employees are also now permitted to waive the previously nonwaivable twenty-one-day

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consideration period to sign certain releases. The law, which was passed by lawmakers in June 2023, took effect immediately upon signing and applies to agreements entered into on or after November 17, 2023.

Also on November 17, 2023, Governor Hochul signed into law [Assembly Bill \(A\) 501](#), which will extend the timeframe to three years for filing administrative complaints with the New York State Division of Human Rights for all forms of discrimination.

## **Liquidated Damages and Certain Affirmation Clauses Prohibited**

S4516 amends the New York General Obligations Law Section 5-336 to prohibit employers from including in releases any provisions “that would prevent the disclosure of the underlying facts and circumstances to the claim or action unless the condition of confidentiality is the complainant’s preference.”

These amendments apply to releases of employment discrimination, harassment, and retaliation claims. Additionally, employees are also now permitted to waive the previously nonwaivable twenty-one-day consideration period to sign certain releases. The amendments do not, however, affect Section 5003-B of the New York Civil Practice Laws and Rules, which still requires plaintiffs wait the full twenty-one-day period before signing a settlement agreement.

The amendments further provide that a release of discrimination, harassment, and retaliation claims is unenforceable if the release requires employees to pay liquidated damages for violating a nondisclosure or nondisparagement clause or requires employees to “forfeit all or part of the consideration for the agreement” for violating such a clause. The law additionally invalidates a release that requires employees to make “any affirmative statement, assertion, or disclaimer” that they were not subject to unlawful discrimination, harassment, or retaliation.

S4516 also extends protections to “independent contractors,” in addition to employees and job applicants.

## **Statute of Limitations Extended for Filing of Administrative Complaints**

A501 will extend the time frame to file a complaint with the New York State Division of Human Rights (NYSDHR) for unlawful discrimination to three years. In 2020, the law was changed to provide for a three-year statute of limitations only for sexual harassment complaints filed with the NYSDHR, while the one-year time frame applied to all other discrimination complaints filed with the NYSDHR. With this recent amendment, the three-year statute of limitations now applies to all complaints filed with NYSDHR.

## **Next Steps**

The laws are the latest of a number of changes in New York to employment agreements and nondisclosure provisions and come amid broader scrutiny of such provisions across the United States. In light of the new restrictions, employers may want to review their settlement agreements and use of nondisclosure and nondisparagement provisions in other agreements, including separation agreements that release claims that may not rise to the level of a formal administrative charge and/or lawsuit.

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