

Legal Update Article

Washington Legislature Passes Limits on Use of Nondisclosure, Nondisparagement Clauses in Employment

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March 21, 2022

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The Washington legislature has passed the “[Silenced No More Act](#),” which would limit all Washington employers’ use of nondisclosure and nondisparagement provisions in employment agreements.

Engrossed Substitute House Bill (ESHB) 1795 awaits signature by Governor Jay Inslee. If Governor Inslee does not veto the bill by March 27, it will become law whether he signs it or not.

The Act makes it illegal for employers in an agreement to prohibit employees from discussing conduct the employee reasonably believed to be an illegal act of discrimination, harassment, retaliation, wage and hour violation, or sexual assault. With limited exceptions, any such provision to the contrary would be void and unenforceable.

The legislation applies to employees (current, former, and prospective) and independent contractors in 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.

The prohibited nondisclosure and nondisparagement provisions in those agreements concern “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.”

Importantly, though, employers may still prevent the “disclosure of the amount paid in settlement of a claim.” Employers also may continue to “protect[] trade secrets, proprietary information, or confidential information that does not involve illegal acts.”

In line with the Act’s liberal construction and remedial purpose, the legislation provides retroactive application to prior agreements. 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.”

Indeed, confidentiality and nondisparagement provisions in agreements made at the beginning and during the course of employment (such as a severance agreement made with an employee who was still employed at the time of signing) would be invalidated. Importantly, only the offending provision would be invalidated, not the whole agreement. Prior agreements made after employment ended to settle legal claims would not be affected.

Finally, any employer who 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.”

All Washington employers should revise their severance and settlement agreement templates in light of ESHB 1795.

Jackson Lewis attorneys will continue to provide updates on Washington’s Silence No More Act. Please contact a Jackson Lewis attorney with any questions.

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