

California Restricts Confidentiality Provisions Concerning Information Related to Sexual Harassment

By Susan E. Groff

October 2, 2018

Meet the Authors



Susan E. Groff

(She/Her)

Principal

(213) 689-0404

Susan.Groff@jacksonlewis.com

Related Services

California Advice and Counsel
Construction
Employment Litigation
Energy and Utilities
Entertainment and Media
Financial Services
Government Contractors
Healthcare
Higher Education
Hospitality
Insurance
Life Sciences
Manufacturing
Real Estate
Retail
Sexual Harassment
Staffing and Independent Workforce
Technology
Transportation and Logistics
Workplace Training

California Governor Jerry Brown has signed three bills into law that restrict employers in the securement of non-disclosure, release, and non-disparagement agreements that attempt to limit parties in discussing sexual harassment-related factual information.

Senate Bill 820 (SB 820)

Settlement agreements that prevent an individual from disclosing factual information related to claims of sexual assault or harassment or discrimination, including retaliation for reporting sexual harassment or discrimination, will no longer be permitted. Effective *January 1, 2019*, SB 820 voids any provision in a settlement agreement that restricts disclosure of such facts.

Facts underlying claims in an administrative or civil action for sexual harassment under California Civil Code section 51.9, employment-related harassment or discrimination based on sex, failure to prevent such discrimination or harassment, or an act of retaliation for reporting such harassment or discrimination, cannot be restricted by use of a non-disclosure agreements.

A claimant may request a provision in the agreement that conceals all of his or her identifying information. The accused, however, has no such protection.

Additionally, the law expressly does not limit the parties' ability to require the settlement amount to remain private.

Assembly Bill 3109 (AB 3109)

A second bill signed by Governor Brown similarly addresses settlement agreements that have the effect of silencing the accuser of harassment claims.

AB 3109 adds section 1670.11 to the California Civil Code to void any provision in a contract or settlement agreement entered into on or after *January 1, 2019*, that waives a party's right to testify regarding criminal conduct or sexual harassment on the part of the other party to the contract or settlement agreement, on the part of the other party's agents or employees.

AB 3109 applies to testimony in an administrative, legislative, or judicial proceeding, so long as the person's testimony was required or requested by the court, administrative agency, or legislative body.

Senate Bill 1300 (SB 1300)

Governor Brown also signed into law SB 1300, which limits employers' ability to obtain non-disparagement agreements or a release of claims from employees beginning *January 1, 2019*. See our article, [Claims of Workplace Harassment in California to Receive Greater Protections under New Law](#), for additional provisions of SB 1300.

SB 1300 makes it an unlawful employment practice under the California Government Code for an employer, in exchange for a raise or bonus or as a condition of employment or continued employment, to do the following:

- Require an employee to sign a release stating the employee does not possess any claim or injury against the employer or other covered entity, and include the release of a right to file and pursue a civil action or complaint with, or otherwise notify, a state agency, law enforcement agency, court, or other governmental entity; or
- Require an employee to sign a non-disparagement agreement or other document that purports to deny the employee the right to disclose information about unlawful acts in the workplace, including, but not limited to, sexual harassment.

Please contact Jackson Lewis with any questions about the new law and compliance assistance, such as risk assessment, policy review, and training.

©2018 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 1000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.