

Virginia's New Restrictions on Nondisclosure, Confidentiality Agreements Affect the Workplace

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A new Virginia statute limits employers' use of nondisclosure and confidentiality agreements with respect to "sexual assault" as a condition of employment.

Under the new law, "Nondisclosure or Confidentiality Agreements; Sexual Assault, Condition of Employment" (Va. Code § 40.1-28.01), employers may not require job applicants or current employees to execute nondisclosure agreements that would conceal the details of any "sexual assault" claim an employee may have against the employer. The statute provides that any such agreement will be treated as against public policy and therefore, void and unenforceable.

"Sexual assault" is not defined. However, the statute applies to claims arising under Virginia laws on rape (Va. Code § 18.2-61), forcible sodomy (§ 18.2-67.1), aggravated sexual battery (§ 18.2-67.3), and sexual battery (§ 18.2-67.4).

The statute is narrowly tailored to apply to applicants and current employees. It does not restrict nondisclosure or confidentiality agreements with former employees. Therefore, nondisclosure and confidentiality provisions in severance and settlement agreements, which typically are executed when an employee is no longer working for an employer, are not affected by the new law.

Virginia employers should review their employment agreements, nondisclosure or confidentiality agreements, and employee handbook provisions that applicants and current employees are required to sign and ensure they comply with the new law.

Please contact a Jackson Lewis attorney if you have any questions about the new law or employment agreements.

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