

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

By Milena Radovic &

December 27, 2019

Meet the Authors



Milena Radovic

Associate

(757) 648-1444

Milena.Radovic@jacksonlewis.com

Related Services

Employment Litigation

Sexual Harassment

Workplace Training

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.

©2019 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 employment and labor law since 1958, Jackson Lewis P.C.'s 1,000+ 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 and stable, and share our clients' goals to emphasize belonging and respect for the contributions of every employee. For more information, visit <https://www.jacksonlewis.com>.