

California Expands Crackdown on Non-Disclosure and Non-Disparagement Provisions

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As we [recently reported](#), California has expanded the list of claims that cannot be subject to non-disclosure provisions in the employment or housing context. [SB 331](#), which takes effect on January 1, 2022, expands the state's limits on non-disclosure provisions to include the settlement of claims of assault, harassment, or discrimination based on any protected characteristic (such as age, race, disability, etc.), and not just sex. In addition to the prohibition on such provisions, the law also requires employers to include certain provisions in separation or settlement agreements with employees. The law specifically states that if an employer requires an employee to enter into a non-disparagement agreement or provision in connection with the employee's separation from employment, the provision must contain the following language:

"Nothing in this agreement prevents you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful."

SB 331 further mandates that an employer entering into a separation agreement with an employee must notify the employee of their right to an attorney and allow the employee at least five days to review the agreement (though the employee may knowingly and voluntarily sign prior to that time).

In light of SB 331's specific requirements, it is important that employers with a presence in California review and update their form separation and settlement agreements for California compliance.

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National Law Review, Volumess XI, Number 340

Source URL: <https://www.natlawreview.com/article/california-expands-crackdown-non-disclosure-and-non-disparagement-provisions>