

THE  
NATIONAL LAW REVIEW

---

## New New Jersey Law Limiting Employment Contracts and Settlement Agreements

---

Tuesday, March 19, 2019

S121 has been signed into law by Governor Murphy.

The law appears to provide that any “non-disclosure provision” in any employment contract or settlement concealing the details related to discrimination, retaliation or harassment is unenforceable. This law does not apply retroactively. So all agreements previously signed remained in force. It is unclear how this will affect non-disparagement clauses in settlements moving forward. Additionally, if an employee is free to tell their side of the story after settlement, speak of their experience in obviously unflattering terms and appeal to the court of public opinion, what incentive will employers have to settle these cases? Are plaintiffs (and their attorneys) suddenly going to accept far less to settle cases now that one of the major reasons an employer would have settled the claim is no longer enforceable?

It should be noted that there appears to be some very open ended wording in this law that will provide some protection to employers entering into settlements. For instance, nowhere in the law is there any language that prevents an employer from demanding that the employee keep the **financial terms** of the settlement private. As such, while the employee may be technically free to tell their story of harassment or discrimination, even after the matter is settled, it appears they can still be prevented from disclosing the financial terms of the settlement. Moreover, the law also contains the following language:

Every settlement agreement resolving a discrimination, retaliation, or harassment claim by an employee against an employer shall include a bold, prominently placed notice that although the parties may have agreed to keep the **settlement and underlying facts confidential, such a provision in an agreement is unenforceable against the employer if the employee publicly reveals sufficient details** of the claim **so that the employer** is reasonably **identifiable**.

Notably, this provision appears to indicate that if the employee releases information sufficient to identify their employer after settlement, the employer can then not only disclose the underlying facts, but the settlement terms as well. As such, it appears the employer, alone, would have the right to disclose the settlement amount. This may be useful if the employee ultimately settled the case for nuisance value, to make clear to the public the claim lacked merit.

The law also notes that a provision in “any employment contract that waives any substantive or procedural right” related to “discrimination, retaliation or harassment” is now against public policy. That means portions of any employment agreement requiring jury waivers and maybe even arbitration of these types of claims may no longer be enforceable.

We will update this post as new information emerges about this law.

© 2019 Giordano, Halleran & Ciesla, P.C. All Rights Reserved

**Source URL:** <https://www.natlawreview.com/article/new-new-jersey-law-limiting-employment-contracts-and-settlement-agreements>



Article By  
[Ari G. Burd](#)  
[Giordano, Halleran & Ciesla, P.C.](#)  
[NJ Labor & Employment Law](#)  
[Labor & Employment](#)  
[Election Law / Legislative News](#)  
[New Jersey](#)