

New Jersey Enacts Law Limiting Non-Disclosure Obligations in Settlement Agreements

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On March 18, 2019, New Jersey Governor Phil Murphy signed into law Senate Bill 121, which prohibits nondisclosure clauses in settlement agreements relating to workplace discrimination, retaliation or harassment.

Effective immediately, the law renders unenforceable any provision in an employment contract that waives “any substantive or procedural right or remedy relating to a claim of discrimination, retaliation or harassment.” The law also does not permit prospective waivers of any right or remedy under the New Jersey Law Against Discrimination, or any other state statute or case law. These provisions, however, do not apply to collective bargaining agreements.

The new law states that any provision in an employment contract or settlement agreement “which has the purpose or effect of concealing the details relating to a claim of discrimination, retaliation, or harassment . . . shall be deemed against public policy and unenforceable against a current or former employee who is a party to the contract or settlement.” The law also provides that a non-disclosure provision as described above will be unenforceable against the employer if the employee publicly reveals “sufficient details” of the claim so that the employer is “reasonably identifiable.” Going forward, every settlement agreement that resolves discrimination, harassment or retaliation claims must also include a “bold, prominently placed notice” indicating that although the parties agree to maintain the confidentiality of the settlement and underlying facts, such a provision would be unenforceable as against an employer if the “employee publicly reveals sufficient details of the claim so that the employer is reasonably identifiable.” The law makes clear that these provisions should not be construed as prohibiting employers and employees from entering into non-compete agreements and confidentiality agreements relating to proprietary information, such as non-public trade secrets, business plan and customer information.

Finally, under the recently amended law, employees are protected from retaliation if they refuse to enter into an agreement or contract that contains a provision deemed unenforceable and against public policy. The law provides a private right of action for individuals claiming a violation of the statute and available remedies include all those available in common law tort actions, as well as attorneys’ fees and costs.

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