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New Jersey Law Prohibits Prospective Waivers and Secret Discrimination, Retaliation, or Harassment Settlements

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On March 18, 2019, New Jersey Governor Phil Murphy [signed a bill](#) amending the New Jersey Law Against Discrimination (LAD) to prohibit contractual provisions that result in the waiver of a right or remedy provided under the LAD or prevent the disclosure of information pertaining to claims of discrimination, retaliation or harassment. The amendment, which is immediately effective, prohibits any provision in an employment agreement, other than a collective bargaining agreement, that:

- Waives any substantive or procedural right or remedy relating to a claim of discrimination, retaliation, or harassment; or
- Prospectively waives any right or remedy under the LAD.

The amendment also prohibits any provision in a settlement agreement that prevents the disclosure of “details relating to a claim of discrimination, retaliation or harassment.” Settlement agreements that resolve claims of discrimination, retaliation or harassment must 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.”

New Jersey employers should consider this new amendment when reviewing and updating employment contracts and anti-discrimination and harassment policies. Any prohibited provision in an agreement entered into on or after the effective date will be considered void as a matter of public policy. The amendment entitles current and former employees to bring a civil action to recover common law tort remedies as well as attorney fees.

The amendment should also be considered when deciding whether or not to settle claims of discrimination, retaliation or harassment. Details surrounding allegations of such claims may no longer remain confidential, which may lead to greater reputational risk.

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