New Mexico Prohibits Non-Disclosure Provisions in Settlement Agreements Involving Harassment and Discrimination Claims

Monday, March 23, 2020

On March 4, 2020, New Mexico Governor Michelle Lujan Grisham signed into law House Bill 21 ("Law"), limiting the use of non-disclosure agreements ("NDA") in settlements of sexual misconduct claims.

The Law prohibits employers from requiring, as a condition of employment, that an employee agree to an NDA in a settlement agreement relating to a claim of sexual harassment, discrimination, or retaliation whether occurring in the workplace or at a "work-related event[s] coordinated by or through the employer." In settlement agreements with former employees, the Law permits the amount of the settlement be kept confidential and, at the former employee’s request, a confidentiality provision may be included that prevents disclosure of factual information that might reveal the complainant’s identity. Further, at the former employee’s "sole" request, a broader NDA – one that prohibits disclosure of “factual information related to the
underlying sexual harassment, discrimination or retaliation claim," is permissible, as long as it does not bar disclosure pursuant to a subpoena or other legal order issued in an administrative, judicial, or other governmental proceeding.

The Law is narrower than laws in other states that have enacted similar limitations on the use of NDAs. Unlike New Jersey and Illinois, for example, the Law applies only to settlement agreements, and does not include employment contracts generally or arbitration agreements. Nor does the Law included a mandated period for review and revocation, as have, for example, New York and Illinois.

In enacting the Law, New Mexico joins a growing list of states, including Arizona, California, Maryland, Nevada, Oregon, Tennessee, Vermont, Virginia, as well as the ones mentioned above, which have enacted laws limiting in various ways the use of NDAs with respect to employee discrimination, harassment and retaliation claims.

The New Mexico law becomes effective May 20, 2020.

©2020 Epstein Becker & Green, P.C. All rights reserved.

Source URL: https://www.natlawreview.com/article/new-mexico-prohibits-non-disclosure-provisions-settlement-agreements-involving