

STATE OF NEW YORK

849--B

2019-2020 Regular Sessions

IN ASSEMBLY

January 11, 2019

Introduced by M. of A. SIMOTAS, QUART, PAULIN, SEAWRIGHT, M. G. MILLER, LENTOL, GOTTFRIED, CRUZ, THIELE, STIRPE, SIMON, ZEBROWSKI, CYMBROWITZ, STERN, GLICK, FERNANDEZ, MAGNARELLI, MOSLEY, LUPARDO, BLAKE, GALEF, EPSTEIN, MONTESANO, CRESPO, NIOU -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general obligations law, in relation to independent consideration required for certain provisions in settlement agreements and violations of nondisclosure agreements in certain settlement agreements

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The general obligations law is amended by adding a new
2 section 5-1117 to read as follows:

3 § 5-1117. Independent consideration required for settlement agree-
4 ments. Independent consideration shall be required for each confiden-
5 tiality provision included in a settlement agreement. For the purposes
6 of this section, "independent consideration" shall mean something of
7 value, either a promise, an act or an object that is offered in exchange
8 for each confidentiality provision.

9 § 2. Section 5-336 of the general obligations law, as added by section
10 1 of subpart D of part KK of chapter 57 of the laws of 2018, is amended
11 to read as follows:

12 § 5-336. Nondisclosure agreements. (a) Notwithstanding any other law
13 to the contrary, no employer, its officers or employees shall have the
14 authority to include or agree to include in any settlement, agreement or
15 other resolution of any claim, the factual foundation for which involves
16 sexual harassment, any term or condition that would prevent the disclo-
17 sure of the underlying facts and circumstances to the claim or action

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD01543-05-9

1 unless the condition of confidentiality is the complainant's preference.
2 Any such term or condition must be provided to all parties, and the
3 complainant shall have twenty-one days to consider such term or condi-
4 tion. If after twenty-one days such term or condition is the
5 complainant's preference, such preference shall be memorialized in an
6 agreement signed by all parties. For a period of at least seven days
7 following the execution of such agreement, the complainant may revoke
8 the agreement, and the agreement shall not become effective or be
9 enforceable until such revocation period has expired.

10 (b) Notwithstanding any other law to the contrary, no person shall
11 have the authority to include or agree to include in any settlement,
12 agreement or other resolution of any claim, the factual foundation for
13 which involves sexual harassment or any other form of discrimination
14 prohibited by law, any term or condition that requires the complainant
15 to pay the defendant liquidated damages in the event that the complain-
16 ant violates a nondisclosure agreement included in such settlement,
17 agreement, or other resolution of a claim.

18 § 3. This act shall take effect immediately.