

STATE OF NEW YORK

849--C

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, NOLAN, L. ROSENTHAL, JACOBSON, ROZIC -- 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 -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, 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 amended by chap-
10 ter 160 of the laws of 2019, is amended to read as follows:

11 § 5-336. Nondisclosure agreements. 1. (a) Notwithstanding any other
12 law to the contrary, no employer, its officers or employees shall have
13 the authority to include or agree to include in any settlement, agree-
14 ment or other resolution of any claim, the factual foundation for which

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

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1 involves discrimination, harassment, and retaliation, in violation of
2 laws prohibiting discrimination, including discriminatory harassment and
3 retaliations, including but not limited to, article fifteen of the exec-
4 utive law, any term or condition that would prevent the disclosure of
5 the underlying facts and circumstances to the claim or action unless the
6 condition of confidentiality is the complainant's preference.

7 (b) Any such term or condition must be provided in writing to all
8 parties in plain English, and, if applicable, the primary language of
9 the complainant, and the complainant shall have up to twenty-one days to
10 consider such term or condition. If [~~after twenty-one days such term or~~
11 ~~condition~~] confidentiality is the complainant's preference, such prefer-
12 ence shall be memorialized in an agreement signed by all parties. For a
13 period of at least seven days following the execution of such agreement,
14 the complainant may revoke the agreement, and the agreement shall not
15 become effective or be enforceable until such revocation period has
16 expired.

17 (c) Any such term or condition shall be void to the extent that it
18 prohibits or otherwise restricts the complainant from: (i) initiating,
19 testifying, assisting, complying with a subpoena from, or participating
20 in any manner with an investigation conducted by the appropriate local,
21 state, or federal agency; or (ii) filing or disclosing any facts neces-
22 sary to receive unemployment insurance, Medicaid, or other public bene-
23 fits to which the complainant is entitled.

24 2. Notwithstanding any provision of law to the contrary, any provision
25 in a contract or other agreement between an employer or an agent of an
26 employer and any employee [~~or~~], potential employee, or independent
27 contractor of that employer entered into on or after January first, two
28 thousand twenty, that prevents the disclosure of factual information
29 related to any future claim of discrimination is void and unenforceable
30 unless such provision notifies the employee [~~or~~], potential employee, or
31 independent contractor that it does not prohibit [~~him or her~~] the
32 complainant from speaking with law enforcement, the equal employment
33 opportunity commission, the state division of human rights, the attorney
34 general, a local commission on human rights, or an attorney retained by
35 the employee or potential employee.

36 3. Notwithstanding any other law to the contrary, no release of any
37 claim, the factual foundation for which involves unlawful discrimi-
38 nation, including discriminatory harassment, and/or retaliation, shall
39 be enforceable, if as part of the agreement resolving such claim:

40 (a) the complainant is required to pay liquidated damages for
41 violation of a nondisclosure clause or nondisparagement clause;

42 (b) the complainant is required to forfeit all or part of the consid-
43 eration for the agreement, for violation of a nondisclosure clause or
44 nondisparagement clause; or

45 (c) it contains or requires any statement, assertion, or disclaimer by
46 the complainant that the complainant was not in fact subject to unlawful
47 discrimination, including discriminatory harassment, and/or retaliation.

48 § 3. This act shall take effect immediately.