

# STATE OF NEW YORK

738

2021-2022 Regular Sessions

## IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. BIAGGI, GAUGHRAN, GOUNARDES, HOYLMAN, KRUEGER, LIU, MAYER, RIVERA, SALAZAR, SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to 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. Section 5-336 of the general obligations law, as amended by  
2 chapter 160 of the laws of 2019, is amended to read as follows:

3 § 5-336. Nondisclosure agreements. 1. (a) Notwithstanding any other  
4 law to the contrary, no employer, its officers or employees shall have  
5 the authority to include or agree to include in any settlement, agree-  
6 ment or other resolution of any claim, the factual foundation for which  
7 involves discrimination, harassment, or retaliation, in violation of  
8 laws prohibiting discrimination, including discriminatory harassment or  
9 retaliation, including but not limited to, article fifteen of the execu-  
10 tive law, any term or condition that would prevent the disclosure of the  
11 underlying facts and circumstances to the claim or action unless the  
12 condition of confidentiality is the complainant's preference.

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

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

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

8 2. Notwithstanding any provision of law to the contrary, any provision  
9 in a contract or other agreement between an employer or an agent of an  
10 employer and any employee [~~or~~], potential employee, or independent  
11 contractor of that employer entered into on or after January first, two  
12 thousand twenty, that prevents the disclosure of factual information  
13 related to any future claim of discrimination is void and unenforceable  
14 unless such provision notifies the employee [~~or~~], potential employee, or  
15 independent contractor that it does not prohibit [~~him or her~~] the  
16 complainant from speaking with law enforcement, the equal employment  
17 opportunity commission, the state division of human rights, the attorney  
18 general, a local commission on human rights, or an attorney retained by  
19 the employee or potential employee.

20 3. Notwithstanding any other law to the contrary, no release of any  
21 claim, the factual foundation for which involves unlawful discrimi-  
22 nation, including discriminatory harassment, or retaliation, shall be  
23 enforceable, if as part of the agreement resolving such claim:

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

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

29 (c) it contains or requires any affirmative statement, assertion, or  
30 disclaimer by the complainant that the complainant was not in fact  
31 subject to unlawful discrimination, including discriminatory harassment,  
32 or retaliation.

33 § 2. This act shall take effect immediately and shall apply to agree-  
34 ments entered on or after such date.