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:

Section 1. Section 5-336 of the general obligations law, as amended by chapter 160 of the laws of 2019, is amended to read as follows:

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

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

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

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

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

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

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

(b) the complainant is required to forfeit all or part of the consideration for the agreement, for violation of a nondisclosure clause or nondisparagement clause; or

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

§ 2. This act shall take effect immediately and shall apply to agreements entered on or after such date.