

STATE OF NEW YORK

4233

2023-2024 Regular Sessions

IN SENATE

February 6, 2023

Introduced by Sen. GOUNARDES -- 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 nondisclosure and non-disparagement 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 and non-disparagement agreements. 1. As used
4 in this section, the following terms shall have the following meanings:

5 (a) "Employer" shall mean all public and private employers within the
6 state.

7 (b) "Employee" shall mean all public and private employees, including
8 applicants for employment, former employees, paid or unpaid interns,
9 volunteers and natural persons employed as independent contractors to
10 carry out work in furtherance of an employer's business enterprise who
11 are not themselves employers.

12 2. (a) Notwithstanding any other law to the contrary, no employer, its
13 officers, agents or employees shall have the authority to include or
14 agree to include in any waiver, settlement, agreement or other resolu-
15 tion of any claim, the factual foundation for which involves [~~discrimi-~~
16 ~~nation, in violation of laws prohibiting discrimination, including but~~
17 ~~not limited to,~~ an alleged violation of the labor law or of article
18 fifteen of the executive law, any term or condition that would prevent
19 the disclosure of the [~~underlying facts and circumstances to the claim~~
20 ~~or action unless the condition of confidentiality is the complainant's~~
21 ~~preference~~] employee's workplace experience with the employer. Any such
22 term or condition shall be deemed against public policy and unenforcea-
23 ble against an employee.

24 (b) [~~Any such term or condition must be provided in writing to all~~
25 ~~parties in plain English, and, if applicable, the primary language of~~

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

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

8 ~~(e) Any such term or condition shall be void to the extent that it~~
9 ~~prohibits or otherwise restricts the complainant from: (i) initiating,~~
10 ~~testifying, assisting, complying with a subpoena from, or participating~~
11 ~~in any manner with an investigation conducted by the appropriate local,~~
12 ~~state, or federal agency; or (ii) filing or disclosing any facts neces-~~
13 ~~sary to receive unemployment insurance, Medicaid, or other public bene-~~
14 ~~fits to which the complainant is entitled.] The provisions of this~~
15 subdivision do not prohibit the inclusion or enforcement of a provision
16 in any agreement that precludes the disclosure of any monetary amount
17 paid in settlement of a claim.

18 (c) The provisions of this subdivision do not prohibit the inclusion
19 or enforcement of a provision in any agreement that restricts an employ-
20 er from revealing the identity of the employee and the existence of and
21 circumstances surrounding the employee's complaint about workplace prac-
22 tices, except as required by law.

23 (d) Agreements that settle legal claims between an employer and
24 employee shall state in bold language that the employee is entitled to
25 receive a copy of the agreement in their primary language.

26 ~~[2-]~~ 3. Notwithstanding any provision of law to the contrary, any
27 provision in a contract or other agreement or application for employment
28 between an employer or an agent of an employer and any employee or
29 potential employee of that employer entered into as a condition of the
30 employee's employment, on or after January first, two thousand [~~twenty~~]
31 ~~twenty-four,~~ that prevents the disclosure of factual information related
32 to any future [~~claim of discrimination~~] alleged violations of the labor
33 law or of article fifteen of the executive law, or that prevents the
34 disclosure of the employee's workplace experience with the employer, is
35 void and unenforceable [~~unless such provision notifies the employee or~~
36 ~~potential employee that it does not prohibit him or her from speaking~~
37 ~~with law enforcement, the equal employment opportunity commission, the~~
38 ~~state division of human rights, a local commission on human rights, or~~
39 ~~an attorney retained by the employee or potential employee]]. The
40 provisions of this subdivision shall not prohibit an employer and
41 employee from agreeing to protect trade secrets, proprietary informa-
42 tion, or confidential information that does not involve alleged
43 violations of the labor law or of article fifteen of the executive
44 law. Any such confidentiality or nondisclosure agreement shall include
45 a statement that the employee has the right to speak with law enforce-
46 ment, the equal employment opportunity commission, the division of human
47 rights, any local commission on human rights, the attorney general, any
48 regulatory agency that investigates workplace conditions, or an attorney
49 retained by the employee or potential employee.~~

50 § 2. This act shall take effect on the sixtieth day after it shall
51 have become a law and shall apply to all applicable contracts entered
52 into, renewed, modified or amended on or after such effective date.