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:

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 **and non-disparagement** agreements. 1. **As used in this section, the following terms shall have the following meanings:**

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

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

2. (a) Notwithstanding any other law to the contrary, no employer, its officers**, agents** or employees shall have the authority to include or agree to include in any **waiver,** settlement, agreement or other resolution of any claim, the factual foundation for which involves [~~discrimination, in violation of laws prohibiting discrimination, including but not limited to,~~] **an alleged violation of the labor law or of** 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~~] **employee's workplace experience with the employer. Any such term or condition shall be deemed against public policy and unenforceable against an employee**.

(b) [~~Any such term or condition must be provided in writing to all 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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~~the complainant, and the complainant shall have twenty-one days to consider such term or condition. If after twenty-one days such term or condition 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.~~

~~(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.~~] **The provisions of this subdivision do not prohibit the inclusion or enforcement of a provision in any agreement that precludes the disclosure of any monetary amount paid in settlement of a claim.**

(c) The provisions of this subdivision do not prohibit the inclusion or enforcement of a provision in any agreement that restricts an employer from revealing the identity of the employee and the existence of and circumstances surrounding the employee's complaint about workplace practices, except as required by law.

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

[~~2.~~] **3.** Notwithstanding any provision of law to the contrary, any provision in a contract or other agreement **or application for employment** between an employer or an agent of an employer and any employee or potential employee of that employer entered into **as a condition of the employee's employment,** on or after January first, two thousand [~~twenty~~] **twenty-four**, that prevents the disclosure of factual information related to any future [~~claim of discrimination~~] **alleged violations of the labor law or of article fifteen of the executive law, or that prevents the disclosure of the employee's workplace experience with the employer,** is void and unenforceable [~~unless such provision notifies the employee or potential employee that it does not prohibit him or her from speaking with law enforcement, the equal employment opportunity commission, the state division of human rights, a local commission on human rights, or an attorney retained by the employee or potential employee~~]**. The provisions of this subdivision shall not prohibit an employer and employee from agreeing to protect trade secrets, proprietary information, or confidential information that does not involve alleged violations of the labor law or of article fifteen of the executive law. Any such confidentiality or nondisclosure agreement shall include a statement that the employee has the right to speak with law enforcement, the equal employment opportunity commission, the division of human rights, any local commission on human rights, the attorney general, any regulatory agency that investigates workplace conditions, or an attorney retained by the employee or potential employee**.

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