

STATE OF NEW YORK

5404

2025-2026 Regular Sessions

IN SENATE

February 21, 2025

Introduced by Sens. GOUNARDES, BAILEY, FERNANDEZ, HOYLMAN-SIGAL, JACKSON, KRUEGER, LIU, SALAZAR, SEPULVEDA, 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 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 658 of the laws of 2023, is amended to read as follows:

3 § 5-336. Nondisclosure and non-disparagement agreements. 1. As used in
4 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, harassment, or retaliation, in violation of laws prohibiting~~
17 ~~discrimination, including discriminatory harassment or retaliation,~~
18 ~~including but not limited to,~~ an alleged violation of the labor law or
19 of article fifteen of the executive law, any term or condition that
20 would prevent the disclosure of the [~~underlying facts and circumstances~~
21 ~~to the claim or action unless the condition of confidentiality is the~~
22 ~~complainant's preference~~] employee's workplace experience with the

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

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1 employer. Any such term or condition shall be deemed against public
2 policy and unenforceable against an employee.

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

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

19 2.] The provisions of this subdivision do not prohibit the inclusion
20 or enforcement of a provision in any agreement that precludes the
21 disclosure of any monetary amount paid in settlement of a claim.

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

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

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

55 ~~[3. Notwithstanding any other law to the contrary, no release of any~~
56 ~~claim, the factual foundation for which involves unlawful discrimi-~~

1 ~~nation, including discriminatory harassment, or retaliation, shall be~~
2 ~~enforceable, if as part of the agreement resolving such claim.~~

3 ~~(a) the complainant is required to pay liquidated damages for~~
4 ~~violation of a nondisclosure clause or nondisparagement clause,~~

5 ~~(b) the complainant is required to forfeit all or part of the consid-~~
6 ~~eration for the agreement, for violation of a nondisclosure clause or~~
7 ~~nondisparagement clause, or~~

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

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