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Washington State's "Silenced No More Act" Curtails the Use of Nondisclosure and Nondisparagement Provisions in Employment Agreements

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Effective June 9, 2022, Washington State's Silenced No More Act (the "Act") will prohibit nondisclosure and nondisparagement provisions regarding illegal acts of discrimination, harassment, retaliation, wage and hour violations, and sexual assault in employment agreements. It is not only a violation of the Act for an employer to seek to enforce such a provision, but also for an employer to request or require that an employee enter into such a provision. It is also a violation of the Act to discharge, discriminate, or retaliate against an employee for disclosing or discussing conduct that the employee reasonably believes to be illegal conduct.

What types of agreements are covered?

The Act applies to nondisclosure and nondisparagement provisions in agreements between employers and current, former, and prospective employees, as well as independent contractors. This could include, for example, offer letters, employment agreements, restrictive covenant agreements, severance agreements, settlement agreements, independent contractor agreements, and employment policies and handbooks.

Are there any exceptions?

The Act does not prohibit an employer from protecting trade secrets, proprietary information, or confidential information that does not involve illegal acts. Additionally, it does not prohibit confidentiality provisions concerning the amount paid in settlement of a claim.

Who does the Act apply to?

The Act applies to all Washington State employers, irrespective of size. Furthermore, all employees who are Washington residents are protected by the law, regardless of where their employer is located.

Does the Act modify any existing laws?

Yes, the Act effectively replaces a 2018 law that covered only claims related to the #MeToo movement.

What are the penalties for violating the Act?

Any nondisclosure or nondisparagement provisions that violate the Act are void and unenforceable. Employers who violate the Act are subject to civil penalties—actual or statutory damages of \$10,000 (whichever is greater), plus reasonable attorneys' fees and costs.

Are existing employment agreements affected by the Act?

The Act is retroactive, meaning any nondisclosure and nondisparagement provisions created prior to June 9, 2022 and agreed to at the outset of employment or during the course of employment are invalid.

However, as long as an employer does not seek to enforce those invalid provisions, an employee cannot recover damages.

One notable exception is that the Act does not apply retroactively to invalidate nondisclosure or nondisparagement provisions contained in settlement agreements signed prior to June 9, 2022.

What should employers do to prepare?

Employers should review all confidentiality, nondisclosure, and nondisparagement provisions contained in their various employment agreements and policies and seek legal assistance in modifying them. These provisions must be carefully worded to ensure compliance with the Act.



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