

Publications

California Further Restricts Confidentiality and Non-Disparagement Clauses in Employment Agreements

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California employers take note: California's "Silenced No More Act" went into effect on January 1, 2022. The Act, which California Governor Gavin Newsom signed into law in November 2021, further restricts confidentiality clauses in settlement agreements while also restricting the use of general non-disparagement clauses.

Confidentiality Clauses Further Restricted

Since 2019, California employers have been prohibited from imposing confidentiality clauses (or non-disclosure agreements) related to claims of either 1) sexual harassment or 2) discrimination based on sex. The new Act, however, broadens this prohibition to harassment and discrimination claims based on any protected characteristic--not just sex. For example, now, an employment agreement cannot contain a confidentiality clause related to racial discrimination or harassment. Confidentiality clauses are still permissible when used to prevent disclosure of the dollar amount of a settlement.

Non-Disparagement Clauses Now Also Restricted

The Act also provides that employers cannot require employees, in exchange for a raise or bonus, or as a condition of employment or continued employment, to sign any non-disparagement clause or any other clause that would deny the employee the right to disclose information about unlawful acts in the workplace. Non-disclosure clauses may still be used if they are accompanied by the following statutory language: "Nothing in this agreement prevents you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful."

Additional Time to Consult with Attorney

The Act also requires that California employers inform employees of their right to consult with an attorney regarding a separation/settlement agreement and that California employers provide at least

five business days for employees to do so.

Conclusion

As noted, the Act became effective January 1, 2022. California employers should review their employment agreements and make appropriate changes in light of the new law. As always, please contact your Vorys lawyer if you have questions about the Act or about employment contracts in general.