

Publications

Labor and Employment Alert: California Enacts Further Restrictions on Non-Disclosure Agreements

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At the end of the 2018 legislative session, California enacted several laws that significantly impact employers. The laws involve nondisclosure agreements, sexual harassment training, and expanded liability under the state's Fair Employment and Housing Act. This *Labor and Employment Alert* is the first of a three-part series that discusses these new laws and their effect on employers.

Existing California law prohibits provisions in settlement agreements that prevent disclosing factual information related to certain sexual offenses. A court is prohibited from entering an order in a civil action that restricts disclosing this information and such a provision entered into on or after January 1, 2017, void as a matter of law and against public policy. Senate Bill 820 expands this prohibition.

Effective January 1, 2019, a provision in a settlement agreement that prevents disclosing factual information related to a claim filed in a civil action or a complaint filed in an administrative action is prohibited if it involves:

- An act of sexual assault.
- An act of sexual harassment.
- An act of workplace harassment or discrimination based on sex, failure to prevent an act of workplace harassment or discrimination based on sex, or an act of retaliation against a person for reporting harassment or discrimination based on sex.
- An act of harassment or discrimination based on sex, or an act of retaliation against a person for reporting harassment or discrimination based on sex, by the owner of a housing accommodation.

As before, a court is prohibited from entering an order that restricts disclosing such information. However, a provision that shields the identity of the claimant and all facts that could lead to the discovery of his or her identity, including pleadings filed in court, may be included within a settlement agreement at the claimant's request (unless a

government agency or public official is a party to the settlement agreement). Further, a provision may preclude disclosing the amount of the settlement.

A provision within a settlement agreement that prevents disclosing factual information related to the claim entered into on or after January 1, 2019, is void as a matter of law and against public policy. Consequently, employers must ensure that their settlement agreements signed after January 1, 2019, comply with these new restrictions. Contact your Vorys lawyer if you have questions about employment agreements.