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Labor and Employment Alert: New Jersey Bans Non-Disclosure Agreements Related to Discrimination, Retaliation and Harassment

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On March 18, 2019, New Jersey Governor Phil Murphy signed a bill into law that bars many types of non-disclosure agreements (NDAs) that arise in the employment arena. The bill, S121, prohibits employers from enforcing any NDA's in employment contracts and settlement agreements that would conceal the details relating to a claim of discrimination, retaliation, or harassment. Not only does this prohibition apply to NDAs entered into in the future, but it also applies to existing NDAs that were previously enforceable. Any employer who enforces or attempts to enforce such an NDA will be liable for the employee's reasonable attorneys' fees and other costs.

The law does not just apply to employers. If the employee publicly reveals details that are sufficient to reasonably identify the employer, then the employee will also be prohibited from enforcing an NDA against the employer. Unlike many other laws, S121 went into effect immediately.

The passage of this law makes New Jersey the third state to effectively ban NDAs in this context, joining California and New York. The #MeToo movement has been a driving force behind these laws, as it has sought to limit parties from keeping allegations of sexual harassment secret. However, New Jersey's prohibition is even broader than California and New York's statutes. Those states prohibit employers from using NDAs to conceal the details of a claim of discrimination, retaliation, or harassment **on the basis of sex**. Conversely, New Jersey prohibits employers from enforcing NDAs that would conceal the details of a claim of discrimination, retaliation, or harassment on the basis of **any** protected characteristic.

Still, New Jersey has not outlawed all types of NDAs. The law specifically allows NDAs that prohibit employees from disclosing proprietary information (non-public trade secrets, business plans, and customer information). It also only prohibits agreements that are used to conceal details relating to discrimination, retaliation, and harassment claims, meaning that employers may still be able to enforce existing NDAs if they are used for other purposes.

Contact your Vorys lawyer if you have questions about this new legislation or the impact it may have on existing non-disclosure agreements.