
**Labor & Workplace Standards
Committee**

HB 1795

Brief Description: Prohibiting nondisclosure and nondisparagement provisions from employers regarding illegal acts of discrimination, harassment, retaliation, wage and hour violations, and sexual assault.

Sponsors: Representatives Berry, Walen, Sells, Fitzgibbon, Bateman, Davis, Macri, Tharinger, Valdez, Pollet, Ormsby, Hackney and Frame.

Brief Summary of Bill

- Makes void and unenforceable provisions in agreements between an employer and employee that prohibit the disclosure of conduct that is illegal discrimination, harassment, retaliation, a wage and hour violation, or sexual assault, or that is against a clear mandate of public policy, occurring in the workplace.

Hearing Date: 1/18/22

Staff: Trudes Tango (786-7384).

Background:

A nondisclosure agreement is a form of contract that restricts the disclosure of material or information to third parties. In general, state contract law governs nondisclosure agreements; however, a nondisclosure agreement may contain a choice of law provision that controls which jurisdiction's law applies.

Employers are prohibited from requiring an employee, as a condition of employment, to sign a nondisclosure agreement that prevents the employee from disclosing sexual harassment or sexual

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assault occurring in the workplace, at work-related events coordinated by or through the employer, or between employees, or between an employer and an employee, off the employment premises. This prohibition does not apply to confidential settlement agreements. It is an unfair practice under the Washington Law Against Discrimination (WLAD) for an employer to retaliate against an employee for disclosing or discussing sexual harassment or sexual assault occurring in the workplace.

Summary of Bill:

The statute prohibiting nondisclosure agreements regarding sexual harassment and sexual assault occurring in the workplace is repealed and replaced.

A provision in an agreement by an employer and employee not to disclose conduct, or a settlement involving conduct, that the employee reasonably believed under state, federal, or common law to be illegal discrimination, illegal harassment, illegal retaliation, a wage and hour violation, or sexual assault, or that is recognized as against a clear mandate of public policy, is void and unenforceable.

Prohibited nondisclosure and nondisparagement provisions concern conduct that occurs at the workplace, at work-related events coordinated by or through the employer, between employees, or between an employer and an employee, whether on or off the employment premises.

Prohibited provisions include those contained in employment agreements, independent contractor agreements, agreements to pay compensation in exchange for the release of a legal claim, or any other agreement between an employer and employee. "Employee" means current, former, and prospective employees or independent contractors.

It is a violation of the act for an employer to:

- discharge or otherwise discriminate or retaliate against an employee for disclosing or discussing conduct that the employee is allowed to disclose or discuss under the act;
- request or require an employee to agree to a prohibited provision; or
- attempt to enforce a prohibited provision.

An employer who violates the act is liable in a civil cause of action for actual or statutory damages of \$10,000, whichever is more, as well as reasonable attorneys' fees and costs.

Enforcement of provisions prohibiting disclosure of the amount paid in a settlement of a claim is still allowed. Agreements protecting trade secrets, proprietary information, or confidential information that does not involve illegal acts are allowed.

The repeal of the statute on nondisclosures of sexual harassment and sexual assault does not affect any existing right or liability or obligation acquired or incurred under the repealed statute and does not affect any proceeding instituted under that statute.

Nondisclosure or nondisparagement provisions in agreements signed by an employee who is a Washington resident is governed by Washington law.

The provisions of the bill are to be liberally construed to fulfill its remedial purpose.

Except for provisions in agreements to pay compensation in exchange for a release of a legal claim, the act applies retroactively from the effective date of the bill only to invalidate nondisclosure or nondisparagement provisions in agreements created before the effective date of the bill.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.