

FINAL BILL REPORT

ESHB 1795

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Synopsis as Enacted

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

Sponsors: House Committee on Labor & Workplace Standards (originally sponsored by Representatives Berry, Walen, Sells, Fitzgibbon, Bateman, Davis, Macri, Tharinger, Valdez, Pollet, Ormsby, Hackney and Frame).

House Committee on Labor & Workplace Standards
Senate Committee on Labor, Commerce & Tribal Affairs

Background:

A nondisclosure agreement is a form of contract restricting 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 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 for an employer to retaliate against an employee for disclosing or discussing sexual harassment or sexual assault occurring in the workplace.

Summary:

The statute prohibiting an employer from requiring an employee, as a condition of employment, to sign a nondisclosure agreement regarding sexual harassment and sexual

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assault occurring in the workplace is repealed and replaced.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. The provisions pertain to 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.

The act applies retroactively to invalidate provisions in agreements created before the effective date of the act and that were agreed to at the outset of employment or during the course of employment. The retroactivity clause allows recovery of damages only to prevent enforcement of those provisions. The retroactivity clause does not apply to a nondisclosure or nondisparagement provision in an agreement to settle a legal claim.

Votes on Final Passage:

House	56	40
Senate	29	20

Effective: June 9, 2022