

NEWS & INSIGHTS

More language could be banned in NJ discrimination lawsuit settlement agreements

BY: [RICHARD L. HACKMAN](#), [STEPHEN J. FLEURY, JR.](#) | [INSIGHTS](#) | [LEGAL UPDATE](#)

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No matter what the word is, New Jersey lawmakers have made clear their intent when it comes to disclosure language in the employer/employee settlement agreements for sexual harassment, discrimination, and retaliation cases.

After already banning nondisclosure clauses – known as NDAs – in 2019 in those lawsuit settlement agreements, the

New Jersey Assembly has now moved to ban non-disparagement clauses, which lawmakers claim are basically the same thing as NDAs, just using a different word. As a result of the #MeToo movement, the state's lawmakers banned NDAs in 2019 in the hopes of giving the victims of sexual harassment, discrimination, or retaliation in the workplace a voice to expose toxic work cultures and hold employers accountable.

But when a New Jersey appellate court in June allowed a municipal police department to use a “non-disparagement” clause in a settlement agreement concerning a sex bias suit that effectively silenced a female police officer, lawmakers decided to go back to work to eliminate what many considered a legal loophole.

The result is the New Jersey Assembly passing an addendum to the bill – [New Jersey Statutes Annotated 10:5-12.8\(a\)](#) – that would eliminate language concerning nondisclosure agreements as well as non-disparagement agreements. The addendum now goes to the New Jersey Senate for its approval.

New Jersey legislators now have made it clear of their intention to eliminate any kind of suppression language in workplace lawsuit settlements of discrimination, harassment, or retaliation. The elimination of that language gives employers and attorneys very little wiggle room in those settlement agreements to keep intimate details of a harassment case from becoming public. More states across the country – [at least 16 by the end of September](#) – are adding statutes, similar to New Jersey's proposal, to give employees a voice in identifying possibly toxic work cultures. It could only be a matter of time before a law such as this comes to Pennsylvania.

An unintended consequence?

But can this new version of the law, if enacted, produce an unintended consequence? Employers settle lawsuits for a variety of reasons. However, non-disparagement clauses can be a motivating factor, especially when the details could damage the company's reputation. The elimination of NDAs and non-disparagement clauses will give employers very limited recourse to keep settlement details from becoming public, and therefore may disincentivize employers from settling sexual harassment, discrimination, or retaliation lawsuits.

This theoretical unintended consequence has the potential to undo the strides made during the #MeToo movement by forcing employers to litigate claims they would otherwise settle. However, the reality is the trend of eliminating NDAs and non-disparagement clauses from settlement agreements will likely continue. With that in mind, employers should focus efforts on education and improving workplace culture. The importance of performing regular reviews of policies and conducting independent investigations into claims of sexual harassment, discrimination, or retaliation cannot be ignored. Employee confidence in a company's ability to adequately respond to complaints of sexual harassment, discrimination, or retaliation is a critical factor in a company's viability and future sustainability.

If your company has any questions on the new law or how it can affect your business, or if you need help with an investigation of a workplace harassment claim, please contact [Rick Hackman](#), [Stephen Fleury Jr.](#) or anyone in the [Saxton & Stump Labor and Employment Group](#).

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