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US: NEW JERSEY BANS NONDISCLOSURE AGREEMENTS FOR DISCRIMINATION CLAIMS

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Employers in New Jersey can no longer enforce nondisclosure agreements (NDAs) relating to discrimination, harassment and retaliation claims against current or former employees under a law — [S 121](#) — that became effective on 18 Mar 2019. The law applies to nondisclosure provisions included in settlement agreements and any type of employment contract (with the exception of collective bargaining agreements) and means employers can't force an employee to stay silent about "details relating to a claim" of harassment or discrimination.

KEY PROVISIONS

Highlights include the following:

- Terms in employment contracts or settlement agreements that have the purpose or effect of concealing details relating to a claim for discrimination, retaliation or harassment (for example, an NDA) are unenforceable. This applies to all new NDAs and renewed or modified NDAs with existing employees on or after 18 Mar 2019.
- Employees can't waive their rights or remedies allowed under the [New Jersey Law Against Discrimination](#) or any other statute or case law.
- Employers can't take any retaliatory action against employees for refusing to sign an NDA, including refusing to hire an individual. Employees can bring legal action within two years of their employer trying to impose any proscribed provision. Arbitration provisions included in collective bargaining agreements remain unaffected. While the law doesn't explicitly address predispute arbitration agreements, employers' use of them will be curtailed due to the law's prohibition on waiving substantive and procedural rights relating to claims for harassment, discrimination and retaliation.
- Nondisclosure provisions included in a settlement agreement are unenforceable against the employer if the employee reveals sufficient details about the claim to make the employer "reasonably identifiable" — even if the parties agreed to keep confidential "the settlement and the underlying facts." A "bold, prominently placed notice" must be included in the settlement agreement to warn employees about situations where the NDA wouldn't be enforceable.

RELATED RESOURCES

- [S 121](#) (State of New Jersey, 18 Mar 2019)

- [New Jersey Law Against Discrimination](#) (State of New Jersey)

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