



**NEW JERSEY BECOMES THE LATEST STATE TO PLACE RESTRICTIONS
ON CONFIDENTIALITY/NON-DISCLOSURE PROVISIONS IN EMPLOYMENT MATTERS**

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As the tidal wave that is the #MeToo movement continues to press forward, on March 18, 2019, New Jersey joined the sweeping trend of disallowing confidentiality/non-disclosure provisions in employment contracts and settlement agreements against current or former employees for claims involving discrimination, retaliation or harassment. Specifically, the law states “[a] provision in any employment contract or settlement agreement which has the purpose or effect of concealing the details relating to a claim of discrimination, retaliation or harassment shall be deemed against public policy and unenforceable against a current or former employee who is a party to the contract or settlement.” Further, as a logical offshoot of the foregoing, retaliatory action cannot be taken against an employee who refuses to enter into an agreement in contravention of this law.

However, with regard to the employer, a provision is permitted to restrict the employer from releasing details of an agreement, as well as the underlying facts, so long as the employee does not publicly reveal such details. To this end, the settlement agreement must contain “a bold, prominently displayed notice that, although the parties may have agreed to keep the settlement and underlying facts confidential, such a provision in an agreement is unenforceable against the employer if the employee publicly reveals sufficient details of the claim so that the employer is identifiable.”

Failure to comply with the above or to attempt to enforce a confidentiality/non-disclosure provision against public policy, and unenforceable pursuant to this new law, shall entitle employees to reasonable attorney’s fees and costs in such matters. Further, the statute of limitations to bring a claim under this new law is two (2) years (consistent with the State’s anti-discrimination law).

Finally, please note that this law explicitly disallows a provision in an employment contract that prospectively waives any remedy relating to a claim of discrimination, retaliation or harassment.



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