

Lawyer Insights

New York Enacts Further Restrictions on Settlement Agreements, Extends Statute of Limitations for Employment Claims

A discussion of the recent amendments to New York legislation that further strengthen the restrictions on non-disclosure provisions in settlement agreements for discrimination, harassment, and retaliation claims. The article includes a look at the impact on New York employers.

By Robert Quackenboss and Michael Reed
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In the wake of the #MeToo movement, New York, like other states, enacted legislation aimed at limiting employers' use of non-disclosure provisions in settlement agreements to resolve claims of workplace discrimination.

Recently, Governor Kathy Hochul signed legislation that amends those existing laws to further strengthen the restrictions on non-disclosure provisions in settlement agreements for discrimination, harassment, and retaliation claims. The legislation also extends the statute of limitations for filing such claims with the state enforcement agency.

[Senate Bill 4516](#) amends section 5-336 of the New York General Obligations Law and prohibits employers from including in any agreement to settle discrimination, harassment, or retaliation claims, "any term or condition that would prevent the disclosure of the underlying facts and circumstances to the claim or action unless the condition of confidentiality is the complainant's preference." The amended language broadens the prohibition of confidentiality provisions to cover harassment and retaliation claims. Previously, the prohibition only applied to discrimination claims. The amendment also allows employees to waive the 21-day consideration period for entering non-disclosure provisions in pre-suit settlement agreements, which was non-waivable under prior law.

Worth noting, however, is that section 5003-B of New York's Civil Practice Law and Rules still requires a plaintiff in any action filed in state court to be given the entire 21-day period to consider a non-disclosure provision, so the 21-day period remains non-waivable when settling claims filed in state court.

In addition, the new language in section 5-336 states that "no release of any claim, the factual foundation for which involves unlawful discrimination, including discriminatory harassment, or retaliation, shall be enforceable, if as part of the agreement resolving such claim," it requires the complainant: (i) to pay liquidated damages for violating a nondisclosure or non-disparagement clause; (ii) to forfeit all or part of the consideration for the agreement for violating a nondisclosure or non-disparagement clause; or (iii) to

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make any affirmative statement, assertion, or disclaimer that he or she was not in fact subject to unlawful discrimination, harassment, or retaliation.

It remains an open question whether this new language in section 5-336 also covers non-disclosure provisions in separation agreements where no claims have been asserted but are being released by the employee. The existing language in section 5-336(1)(a) covers “any settlement, agreement or other resolution of any claim,” which suggests that it applies only to agreements settling asserted claims. The new language in section 5-336(3) applies to the “release of any claim,” which suggests it could apply to release provisions in, for example, a standard separation agreement that is not based on any discrimination claim. However, the new language also states the new prohibitions apply to an “agreement resolving such claim,” and refers to the “complainant,” which suggests it is limited to agreements resolving asserted claims. The amended section 5-336 also covers independent contractors, in addition to employees and applicants.

Separately, [Assembly Bill 501](#) extends the statute of limitations to file a complaint with the New York State Division of Human Rights from one to now three years. Previously, the law provided a three-year statute of limitations only for sexual harassment claims. Under the new amendment, employees will have three years to file any type of workplace discrimination or harassment claim.

Governor Hochul signed both bills into law on Nov. 17, 2023. Senate Bill 4516 took effect immediately and Assembly Bill 501 will take effect 90 days from the governor’s signing. New York’s restrictions on non-disclosure provisions and expansion of the statute of limitations for filing discrimination claims are just some of the latest changes in an ongoing national trend toward expanding employee protections in employment claims.

Employers in New York should review their standard form agreements to ensure they comply with the new laws. The prohibition on liquidated damages in amended section 5-336 will make it more difficult for employers to establish damages in the event of a breach.

Employers also may have to change or implement other practices as well. For example, with the extended statute of limitations for filing complaints with the New York State Division of Human Rights, employers may need to ensure their document collection and preservation practices are updated.

The extended statute of limitations also allows for more potential employee turnover before a complaint is filed and while it is being investigated. It is not uncommon for a state or federal administrative investigation to take months or even years. This extended timeframe may impact how employers wish to conduct internal investigations and interviews.

Further, the extended statute of limitations period may produce an uptick in discrimination complaints. Former employees whose claims are not time-barred under the new law may be inclined to assert their claims.

Employers should be aware of these changes and understand that existing model or form agreements may need to be updated. Our firm will continue to monitor this trend and stay abreast of these changes.

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