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California Passes New Law Addressing Settlement Agreements and Nondisclosure Agreements

California Governor Gavin Newsom recently signed into law [California Senate Bill 331](#) (SB?331) titled the "Silenced No More Act." SB?331 expands two of California's existing laws regarding employee settlement agreements and nondisclosure agreements; specifically, Civil Procedure Code Section 1001 and California Government Code Section 12964.5.

Changes to Civil Procedure Code Section 1001: Settlement Agreement Terms

Currently, Civil Procedure Code Section 1001 precludes provisions in a settlement agreement that prevent the disclosure of factual information related to a claim pertaining to sexual assault, harassment, or discrimination *based on sex*, or retaliation for reporting harassment or discrimination *based on sex*. SB?331 updated this law and, starting January 1, 2022, will preclude provisions in a settlement agreement that prevent the disclosure of factual information relating to a claim of sexual assault, sexual harassment, workplace harassment or discrimination, failure to prevent workplace harassment or discrimination, or an act of retaliation against a person for reporting or opposing harassment or discrimination. In short, SB?331 removed the requirement that the harassment or discrimination be *based on sex* and expands the protections to all types of workplace discrimination or harassment.

Changes to California Government Code Section 12964.5: Nondisclosure Agreements and Settlement Agreements

SB?331 also modified California Government Code Section 12964.5. Employers that now want to utilize nondisparagement agreements (NDAs) as a condition of employment or in a separation agreement need to use specific language providing that "*Nothing in this agreement prevents [an employee] from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that [they] have reason to believe is unlawful.*" SB?331 also provides that an employer offering agreements related to separation from employment notify the employee that the employee has a right to consult with an attorney and provide at least five days within which to do so. SB?331 does permit an employer and an employee to enter into an agreement that prohibits the disclosure of the amount paid in a severance or settlement agreement. In addition, it provides that an employer can protect its trade secrets, proprietary information, or confidential information that are not related to unlawful acts in the workplace. Finally, California Government Code Section 12964.5 does not apply to a negotiated settlement resolving an underlying claim that has been filed by the employee in court, before an administrative agency, in an alternative dispute resolution forum, or through an employer's internal complaint process.

Takeaways

Companies with employees in California should be sure to review the company's use of settlement agreement confidentiality terms and review the company's nondisclosure agreement. If in doubt, they should consult with experienced legal counsel to determine whether SB?331 has any impact on their current employment practices.

Authors

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