

Washington’s “Silenced  
No More Act” Limits  
Use of Nondisclosure and  
Nondisparagement Agreements

**Frequently Asked Questions**

# / Overview

As of June 9, 2022, Washington State's Silenced No More Act (the "Act") took effect. The Act affects all employers entering into employment and settlement agreements with Washington employees, limiting the topics that can be included in nondisclosure or nondisparagement provisions in these agreements. The Act makes Washington the only state other than California to limit nondisclosure and nondisparagement provisions so significantly.



# / Questions Employers are asking



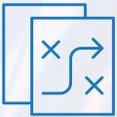
## What types of agreements are covered by the Act?

- / The Act applies to nondisclosure and nondisparagement provisions in employment agreements, independent contractor agreements, agreements to pay compensation for releasing a legal claim, and any other agreement between employer and employee.



## Who does this Act apply to?

- / The law broadly defines and covers “employees” who are current, former, or prospective employees or independent contractors.
- / The Act protects “employees” who are Washington state residents and binds employers – even out of state employers – who have signed or attempt to sign agreements with such Washington employees.



## What does the Act do?

- / The law prohibits employers from doing the following:
  - / Discharging or otherwise discriminating or retaliating against an employee for disclosing allegations connected to a protected topic;
  - / Requiring or even requesting that an employee agree to any provision prohibited by the Act; or
  - / Attempting to enforce a prohibited provision, whether through a lawsuit, threat to enforce the provision, or any other attempt to influence an employee to comply with a prohibited provision.



## What topics and contract provisions are protected under the Act?

- / Any conduct an *employee reasonably believed* under Washington state, federal, or common law to be illegal discrimination, illegal harassment, illegal retaliation, a wage and hour violation, sexual assault, or conduct recognized as against a clear mandate of public policy.
- / Any provision to not disclose or discuss such conduct, or the existence of a settlement involving such conduct, is *void and unenforceable*.
- / Allegations over conduct occurring at the workplace, at work-related events coordinated by or through an employer, between employees, or between an employer and an employee, whether on or off the employment premises.
- / Note: The law **does not** prohibit employers from:
  - / including provisions that prohibit disclosure of the amount paid in settlement or severance; or
  - / including provisions that protect trade secrets, proprietary information, or confidential information that does not involve illegal acts.



## What are the consequences for violating the Act?

- / The Act creates a private cause of action and may expose employers to civil liability for actual damages or statutory damages of \$10,000 (whichever is more). Additionally, employers may face liability for reasonable attorneys’ fees and costs.



## Does the Act have retroactive effect?

- / Yes. The Act invalidates provisions signed before June 9, 2022 that violate the Act and that were agreed to at the outset of employment or during employment. Employees cannot receive damages for an agreement signed before June 9 simply because it contains a prohibited provision. However, employers will violate this law by attempting to enforce such a prohibited provision.
- / Importantly, the retroactive effect does *not* apply to nondisclosure or nondisparagement provisions within settlement agreements. If the settlement agreement was signed before June 9, 2022, then such nondisclosure and nondisparagement provisions continue to be enforceable.

# / At Foster Garvey, we continue to advise our clients to ensure compliance *now* in order to avoid penalties later.

For **future documents**, review your templates that contain nondisclosure or nondisparagement terms and ensure that future documents do not contain prohibited provisions.

- / Future agreements can still include nondisclosure and nondisparagement provisions relating to protection of trade secrets, proprietary information, or confidential information not involving illegal acts. Broad nondisclosure or nondisparagement provisions should be avoided. Instead, the protected information should be narrow and pertain to permitted topics.
- / Future settlement agreements may still include nondisclosure provisions limited to the settlement *amount*.
- / Our attorneys can support the review process.

For **existing documents**, careful review with the assistance of legal counsel is prudent.

- / Do not attempt to enforce nondisclosure or nondisparagement provisions in *employment agreements* signed before June 9, 2022. Agreements signed before June 9 do not necessarily need revision since employers only violate the Act by attempting to enforce the prohibited provision.
- / For *settlement* agreements signed before June 9, employers can lawfully enforce nondisclosure and nondisparagement provisions.

**Consider modifying written or verbal requirements for confidentiality** with workplace investigations, hiring procedures, and other employment policies (such as those relating to social media usage). Legal counsel is helpful in this process.

If multiple managers prepare or negotiate agreements with employees or applicants, **provide training** to educate them on the Act's prohibitions, the reasons for revising employer documents and procedures, and the enforcement of existing agreements.

# / We can help you meet your challenges with practical solutions.

As attorneys, we believe our role is not to focus on what you cannot do, but instead to help you find innovative ways to achieve your objectives while avoiding unnecessary legal risks. Our our experienced team of professionals is here to help.



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