

Amendments to Oregon Limits on Workplace Agreements Await Governor's Signature

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The Oregon legislature has passed amendments to the Workplace Fairness Act clarifying that workplace agreements with a release of claims cannot include confidentiality or nondisparagement provisions, among other clarifications and changes.

If Governor Kate Brown signs [Senate Bill 1586](#) (SB 1586) into law, the amendments will become effective January 1, 2023.

Workplace Fairness Act

Effective October 1, 2020, the Workplace Fairness Act, in part, made it unlawful for an employer to require certain employees to enter into agreements preventing them from disclosing or discussing workplace discrimination and sexual assault.

The Act permitted parties to include confidentiality and nondisparagement terms in their agreements only in certain situations, including when an employee “requested to enter into the agreement.”

The law was vague on the processes by which contracting parties can identify whether an employee requested confidentiality or nondisparagement provisions.

(For more on the Workplace Fairness Act, see our article, [New Oregon Law Restricts Nondisclosure, Nondisparagement Provisions in Workplace Agreements.](#))

Amendments

In its 2022 session, Oregon’s legislature revised the Act to clarify and amend its terms. If signed by the governor, SB 1586 does the following:

- Expressly prohibits employers from asking employees to request confidentiality or nondisparagement terms when the agreement includes a release of claims.
- Expressly prohibits employers from conditioning settlement offers on an employee requesting to include confidentiality or nondisparagement terms.
- Clarifies the Act’s application to “former” employees.
- Provides for a civil penalty and private right of action if employers violate the Act by conditioning settlement offers on an employee requesting confidentiality or nondisparagement terms.
- Requires employers notify employees about rights under the Act, including providing employees a copy of the employer’s anti-harassment policy. This notification must occur in the language the employer regularly uses to communicate with the employee.
- Clarifies that the scope of prohibited confidentiality clauses in settlement agreements extends to the amount or fact of any settlement.

- Voids any contractual provisions that violates the Act.
- Requires private mediators charged with mediating claims or allegations concerning workplace discrimination or sexual assault provide unrepresented parties a copy of the Oregon Bureau of Labor and Industries' model policies concerning the Act.

The amendments further provide that if an employer's communications in mediation violate the Act, those communications (which were confidential and inadmissible in judicial and administrative proceedings) lose their veil of confidentiality and become admissible to prove a violation.

If you have any questions about the Act or the amendments, please contact a Jackson Lewis attorney.

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