

Legal Update Article

# **Washington's Limits on Use of Nondisclosure, Nondisparagement Clauses in Employment Agreements**

By Michael A. Griffin & Jaime M. Heimerl

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## Meet the Authors



### Michael A. Griffin

Office Managing Principal and  
Office Litigation Manager  
(206) 626-6416  
[Michael.Griffin@jacksonlewis.com](mailto:Michael.Griffin@jacksonlewis.com)



### Jaime M. Heimerl

Associate  
(206) 626-6407  
[Jaime.Heimerl@jacksonlewis.com](mailto:Jaime.Heimerl@jacksonlewis.com)

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Employment Litigation

Washington's [Silenced No More Act](#) limits all Washington employers' use of nondisclosure and nondisparagement provisions in employment agreements.

The Act (codified as RCW 49.44.211) makes it illegal for employers in an agreement to prohibit employees from discussing conduct the employee reasonably believed to be an illegal act of discrimination, harassment, retaliation, wage and hour violation, or sexual assault. With limited exceptions, any such provision to the contrary would be void and unenforceable.

The legislation applies to employees (current, former, and prospective) and independent contractors in employment agreements, independent contractor agreements, agreements to pay compensation in exchange for the release of a legal claim, or any other agreement between an employer and an employee.

The prohibited nondisclosure and nondisparagement provisions in those agreements concern "conduct that occurs at the workplace, at work-related events coordinated by or through the employer, between employees, or between an employer and an employee, whether on or off the employment premises."

Importantly, employers may still prevent the "disclosure of the amount paid in settlement of a claim." Employers also may continue to "protect[] trade secrets, proprietary information, or confidential information that does not involve illegal acts."

In line with the Act's liberal construction and remedial purpose, the legislation provides retroactive application to prior agreements. The legislation applies retroactively from its effective date of June 9, 2022, "only to invalidate nondisclosure or nondisparagement provisions in agreements created before the effective date of [the Act] and which were agreed to at the outset of employment or during the course of employment."

Indeed, confidentiality and nondisparagement provisions in agreements made at the beginning and during the course of employment (such as a severance agreement made with an employee who was still employed at the time of signing) would be invalidated. Significantly, only the offending provision would be invalidated, not the whole agreement. Prior agreements made after employment ended to settle legal claims would not be affected.

Finally, any employer who violates the Act may be "liable in a civil cause of action for actual or statutory damages of \$10,000, whichever is more, as well as reasonable attorneys' fees and costs."

All Washington employers should revise their severance and settlement agreement templates to comply with the Act.

Jackson Lewis attorneys are monitoring developments and will continue to provide updates on Washington's Silence No More Act. Please contact a Jackson Lewis attorney with any questions.

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