

California Restricts Confidentiality Provisions Concerning Information Related to Sexual Harassment

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California Governor Jerry Brown has signed three bills into law that restrict employers in the securing of non-disclosure, release, and non-disparagement agreements that attempt to limit parties in discussing sexual harassment-related factual information.

Senate Bill 820 (SB 820)

Settlement agreements that prevent an individual from disclosing factual information related to claims of sexual assault or harassment or discrimination, including retaliation for reporting sexual harassment or discrimination, will no longer be permitted. Effective *January 1, 2019*, SB 820 voids any provision in a settlement agreement that restricts disclosure of such facts.

Facts underlying claims in an administrative or civil action for sexual harassment under California Civil Code section 51.9, employment-related harassment or discrimination based on sex, failure to prevent such discrimination or harassment, or an act of retaliation for reporting such harassment or discrimination, cannot be restricted by use of a non-disclosure agreements.

A claimant may request a provision in the agreement that conceals all of his or her identifying information. The accused, however, has no such protection.

Additionally, the law expressly does not limit the parties' ability to require the settlement amount to remain private.

Assembly Bill 3109 (AB 3109)

A second bill signed by Governor Brown similarly addresses settlement agreements that have the effect of silencing the accuser of harassment claims.

AB 3109 adds section 1670.11 to the California Civil Code to void any provision in a contract or settlement agreement entered into on or after *January 1, 2019*, that waives a party's right to testify regarding criminal conduct or sexual harassment on the part of the other party to the contract or settlement agreement, on the part of the other party's agents or employees.

AB 3109 applies to testimony in an administrative, legislative, or judicial proceeding, so long as the person's testimony was required or requested by the court, administrative agency, or legislative body.

Senate Bill 1300 (SB 1300)

Governor Brown also signed into law SB 1300, which limits employers' ability to obtain non-disparagement agreements or a release of claims from employees beginning *January 1, 2019*. See our article, [Claims of Workplace Harassment in California to Receive Greater Protections under New Law](#), for additional provisions of SB 1300.

SB 1300 makes it an unlawful employment practice under the California Government Code for an employer, in exchange for a raise or bonus or as a condition of employment or continued employment, to do the following:

- Require an employee to sign a release stating the employee does not possess any claim or injury against the employer or other covered entity, and include the release of a right to file and pursue a civil action or complaint with, or otherwise notify, a state agency, law enforcement agency, court, or other governmental entity; or
- Require an employee to sign a non-disparagement agreement or other document that purports to deny the employee the right to disclose information about unlawful acts in the workplace, including, but not limited to, sexual harassment.

Please contact Jackson Lewis with any questions about the new law and compliance assistance, such as risk assessment, policy review, and training.

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