
OLR Bill Analysis

SB 1035

AN ACT CONCERNING LIMITATIONS ON THE USE OF NONDISCLOSURE AGREEMENTS.

SUMMARY

This bill generally prohibits the use of non-disclosure and non-disparagement agreements in employment.

It makes it a discriminatory practice, under the laws administered by the Commission on Human Rights and Opportunities (CHRO), for an employer to take certain actions, such as (1) terminating employees for disclosing conduct they reasonably believed to be a discriminatory employment practice or (2) requiring employees to enter an agreement that prohibits them from disclosing this conduct. It also voids any provision in an agreement between an employer and employee or independent contractor that prohibits the employee or contractor from disparaging or disclosing conduct they reasonably believe to be a discriminatory employment practice.

Outside of the CHRO laws, the bill also makes void and unenforceable any provision in an employment contract that requires an employee not to disclose or discuss conduct that he or she reasonably believes to be legally impermissible discrimination, harassment, or retaliation; a wage and hour violation; or a sexual assault, or that is recognized as against a clear mandate of public policy. It prohibits employers from (1) discharging or retaliating against an employee for disclosing this type of conduct in the workplace or at work-related events, (2) asking or requiring an employee to enter into a prohibited nondisclosure agreement, or (3) enforcing one.

Under the bill, employers who violate these prohibitions are liable for actual or statutory damages of at least \$10,000. For agreements entered into before October 1, 2025, however, the prohibited provisions are only

void and unenforceable if they were entered into at the outset or during the course of employment, and employees can only recover damages related to preventing their enforcement.

EFFECTIVE DATE: October 1, 2025

DISCRIMINATORY EMPLOYMENT PRACTICES

The bill makes it a discriminatory practice for an employer, or the employer's agent, to:

1. refuse to hire or employ; discriminate in compensation or in terms, conditions, or privileges of employment; or bar or discharge from employment an employee or independent contractor because they (a) disclosed conduct that they reasonably believe to be a discriminatory employment practice or (b) disparaged the employer for engaging in conduct they reasonably believe to be such a practice; or
2. require or request a prospective, current, or former employee or independent contractor to enter into an agreement containing a provision that is void under the bill (see directly below), or for an employer to attempt to enforce the provision.

Existing law gives someone adversely affected by a discriminatory practice, or CHRO itself, the right to file a complaint with CHRO.

Void Provision

The bill voids as against public policy any provision in an agreement between an employer and a prospective, current, or former employee or independent contractor that prohibits disparagement or disclosure of conduct the employee or contractor reasonably believes to be a discriminatory employment practice.

Damages

Under the bill, an employer who violates this provision is liable to an employee or independent contractor for actual damages or statutory damages of \$10,000, whichever is more, as well as other remedies provided under law, including those described below.

Legal Interpretation and Remedial Purpose; Interns and Volunteers

The bill specifies that the provisions described above must (1) be liberally construed to carry out their remedial purpose and (2) extend to paid or unpaid interns and any volunteer engaged in service to an employer in this state in the employer's business.

NONDISCLOSURE AND NONDISPARAGEMENT AGREEMENTS

Separate from the CHRO discrimination laws, the bill also generally prohibits an employer from including nondisclosure or nondisparagement clauses in employment contracts. Under these provisions of the bill, an "employee" includes (1) a current, former, or prospective employee, or an independent contractor; and (2) any elected or appointed official of a municipality, board, commission, counsel, or other governmental body. An "employer" includes the state and its political subdivisions, and anyone who acts, directly or indirectly, in the employer's interest to any of its employees and any of the employer's successors in interest. A "volunteer" is a person who provides services to an employer without compensation, including interns.

Void and Unenforceable Provisions

The bill makes any provision in an employment contract between an employer and an employee or volunteer void and unenforceable if it requires the employee or volunteer not to disclose or discuss conduct, or a settlement involving conduct, that he or she reasonably believed to be legally impermissible (under state, federal, or common law) discrimination, harassment, or retaliation directed at an employee or volunteer; a wage and hour violation; or a sexual assault, or that is recognized as against a clear mandate of public policy.

Prohibited Provisions. The bill further specifies that prohibited nondisclosure or nondisparagement provisions:

1. concern legally impermissible conduct at the workplace, at work-related events coordinated by or through the employer, between employees or volunteers, or between an employer and an employee or volunteer, whether on or off the employment

premises, and

2. include those in employment agreements, independent contractor agreements, agreements to pay compensation for the release of a legal claim, or any other form of agreement between the employer and an employee or a volunteer.

Violations

The bill makes it a violation for an employer to:

1. discharge or otherwise discriminate or retaliate against an employee or volunteer for disclosing or discussing conduct occurring in the workplace, at work-related events coordinated by or through the employer, between employees or volunteers, or between the employer and an employee or volunteer, whether on or off the employment premises, that the employee or volunteer reasonably believed to be (a) legally impermissible discrimination, harassment, or retaliation directed at an employee or volunteer; (b) a wage and hour violation or a sexual assault; or (c) recognized as against a clear mandate of public policy;
2. request or require that an employee or volunteer enter into an agreement provision prohibited by this section; or
3. enforce a provision of an agreement prohibited by this section, whether through a lawsuit, a threat to enforce, or any other attempt to influence a party to comply with a provision in any agreement that is prohibited under the bill.

Actions Not Prohibited

The bill specifies that it does not prohibit:

1. an employer and an employee or volunteer from protecting trade secrets or proprietary or confidential information that does not involve illegal acts;
2. an employee or volunteer from requesting a binding written

agreement with the employer, which may include terms and conditions that preclude the employer from disclosing certain confidential information about an employee or a volunteer that does not involve illegal acts; or

3. enforcing a provision in any agreement that prohibits disclosing the amount of a claim settlement.

Civil Cause of Action and Damages

The bill creates a civil cause of action by making any employer who violates these provisions on or after October 1, 2025, liable for actual or statutory damages of \$10,000, whichever is more, as well as attorney's fees and costs.

Limits for Agreements Entered Before October 1, 2025

Under the bill, a prohibited nondisclosure or nondisparagement provision entered before October 1, 2025, is void and unenforceable only if it was entered into at the outset of employment or during employment. And in these cases, an employee may recover only damages relating to preventing the provision's enforcement.

Additionally, this does not apply to a nondisclosure or nondisparagement provision in an agreement to settle a legal claim.

Legal Interpretation and Remedial Purpose

The bill specifies that its (1) provisions must be liberally construed to effectuate its remedial purpose and (2) remedies are cumulative and must not be construed as restricting any other remedy available under law.

Governing Law

Under the bill, a nondisclosure or nondisparagement provision in any agreement signed by an employee or volunteer who is a Connecticut resident is governed by Connecticut laws.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 9 Nay 4 (03/18/2025)