

[Second Reprint]

ASSEMBLY, No. 1242

STATE OF NEW JERSEY
218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

Assemblyman JON M. BRAMNICK

District 21 (Morris, Somerset and Union)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Co-Sponsored by:

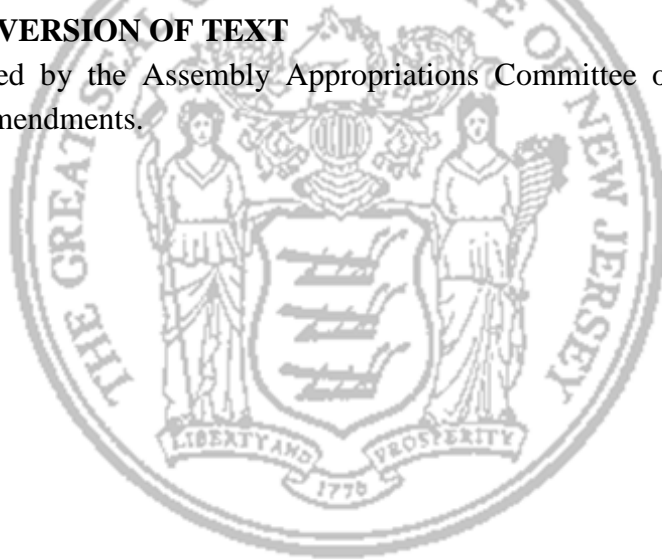
Assemblywoman Quijano, Assemblymen Armato, Giblin, Assemblywoman N.Munoz, Assemblymen Johnson, Moriarty, Assemblywomen Jasey, Lampitt and Downey

SYNOPSIS

Bars provisions in employment contracts that waive rights or remedies; bars agreements that conceal details relating to discrimination claims.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on January 28, 2019, with amendments.



(Sponsorship Updated As Of: 2/1/2019)

1 AN ACT concerning discrimination and supplementing Title 10 of
2 the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. a. A provision in any employment contract that waives any
8 substantive or procedural right or remedy relating to a claim of
9 discrimination, retaliation, or harassment shall be deemed against
10 public policy and unenforceable.

11 b. No right or remedy under the “Law Against Discrimination,”
12 P.L.1945, c.169 (C.10:5-1 et seq.) or any other statute or case law
13 shall be prospectively waived.

14 c. This section shall not apply to the terms of any collective
15 bargaining agreement between an employer and the collective
16 bargaining representative of the employees.

17

18 2. ¹a. ¹A provision in any employment contract or
19 ¹settlement¹ agreement which has the purpose or effect of
20 concealing the details relating to a claim of discrimination,
21 retaliation, or harassment ¹(hereinafter referred to as a “non-
22 disclosure provision”)¹ shall be deemed against public policy and
23 unenforceable ¹against a current or former employee (hereinafter
24 referred to as an “employee”) who is a party to the contract or
25 settlement. If the employee publicly reveals sufficient details of the
26 claim so that the employer is reasonably identifiable, then the non-
27 disclosure provision shall also be unenforceable against the
28 employer.

29 b. Every settlement agreement resolving a discrimination,
30 retaliation, or harassment claim by an employee against an
31 employer shall include a bold, prominently placed notice that
32 although the parties may have agreed to keep the settlement and
33 underlying facts confidential, such a provision in an agreement is
34 unenforceable against the employer if the employee publicly reveals
35 sufficient details of the claim so that the employer is reasonably
36 identifiable¹.

37 ²c. Notwithstanding any other provision of law to the contrary,
38 this section shall not be construed to prohibit an employer from
39 requiring an employee to sign an agreement:

40 (1) in which the employee agrees not to enter into competition
41 with the employer during or after employment; or

42 (2) in which the employee agrees not to disclose proprietary
43 information, which includes only non-public trade secrets, business
44 plan and customer information.²

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ALA committee amendments adopted May 10, 2018.

²Assembly AAP committee amendments adopted January 28, 2019.

- 1 3. A person who enforces or attempts to enforce a provision
2 deemed against public policy and unenforceable pursuant to
3 P.L. , c. (C.) (pending before the Legislature as this bill)
4 shall be liable for the employee's reasonable attorney fees and
5 costs.
6
- 7 4. No person shall take any retaliatory action, including but not
8 limited to failure to hire, discharge, suspension, demotion,
9 discrimination in the terms, conditions, or privileges of
10 employment, or other adverse action, against a person, on grounds
11 that the person does not enter into an agreement or contract that
12 contains a provision deemed against public policy and
13 unenforceable pursuant to P.L. , c. (C.) (pending before the
14 Legislature as this bill).
15
- 16 5. Any person claiming to be aggrieved by a violation of
17 P.L. , c. (C.) (pending before the Legislature as this bill)
18 may initiate suit in Superior Court. An action pursuant to this
19 section shall be commenced within two years next after the cause of
20 any such action shall have accrued. All remedies available in
21 common law tort actions shall be available to prevailing plaintiffs.
22 These remedies are in addition to any provided by
23 P.L. , c. (C.) (pending before the Legislature as this bill) or
24 any other statute. A prevailing plaintiff shall be awarded reasonable
25 attorney fees and costs.
26
- 27 6. This act shall take effect immediately and shall apply to all
28 contracts and agreements entered into, renewed, modified, or
29 amended on or after the effective date.