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SENATE BILL 324

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Katy M. Duhigg

AN ACT

RELATING TO EMPLOYMENT; PROHIBITING NONDISCLOSURE AND NON-DISPARAGEMENT AGREEMENTS; AMENDING A SECTION OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 50-4-36 NMSA 1978 (being Laws 2020, Chapter 16, Section 1) is amended to read:

"50-4-36. WORKPLACE SEXUAL ASSAULT, SEXUAL HARASSMENT, SEXUAL DISCRIMINATION AND SEXUAL RETALIATION CLAIMS-- NONDISCLOSURE AND NON-DISPARAGEMENT AGREEMENTS AND CERTAIN ACTIONS PROHIBITED.--

A. A private employer shall not, as a term of employment, require [~~an~~] a prospective, current or former employee or independent contractor to sign a nondisclosure or non-disparagement provision of a settlement agreement relating to a claim of sexual assault, sexual harassment, sexual

underscoring material = new
[bracketed material] = delete

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[bracketed material] = delete

1 discrimination or sexual retaliation in the workplace brought
2 by the prospective, current or former employee or independent
3 contractor or prevent the prospective, current or former
4 employee or independent contractor from disclosing a claim of
5 sexual assault, sexual harassment, sexual discrimination or
6 sexual retaliation occurring in the workplace or at a work-
7 related event coordinated by or through the employer.

8 B. This section does not prohibit a settlement
9 agreement [~~between an~~] with a prospective, current or former
10 employee or [~~former employee~~] independent contractor alleging
11 sexual assault, sexual harassment, sexual discrimination or
12 sexual retaliation from containing a confidentiality
13 [~~provisions. A confidentiality provision is permitted when~~]
14 provision if the provision:

15 (1) [~~it~~] relates to the monetary amount of a
16 settlement; or

17 (2) at the prospective, current or former
18 employee's or independent contractor's request, [~~it~~] prohibits
19 disclosure of factual information related to the underlying
20 sexual assault, sexual harassment, sexual discrimination or
21 sexual retaliation claim or facts that could lead to the
22 identification of the prospective, current or former employee
23 or independent contractor.

24 C. [~~At the sole request of the employee, a~~
25 ~~settlement agreement subject to this section may contain a~~

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1 ~~confidentiality provision that prevents the disclosure of~~
2 ~~factual information related to the underlying sexual~~
3 ~~harassment, discrimination or retaliation claim.]~~ The
4 provisions of this [~~subsection~~] section shall not be construed
5 to prevent disclosure of information that is the subject of the
6 confidentiality provision if disclosure is required to be made
7 in a judicial, administrative or other governmental proceeding
8 pursuant to a valid subpoena or other applicable order as
9 otherwise required by law.

10 D. Except as provided in [~~Subsections B and~~]
11 Subsection C of this section, a confidentiality provision in a
12 settlement agreement subject to this section is void and
13 unenforceable as a matter of law.

14 E. In any civil action involving a claim of sexual
15 assault, sexual harassment, sexual discrimination or sexual
16 retaliation, a plaintiff may present evidence that the employer
17 against whom the action was filed entered into one or more
18 agreements that included a nondisclosure or non-disparagement
19 clause involving the conduct of the same individual or
20 individuals who are alleged to have engaged in the unlawful
21 acts. Such evidence may be used in support of an award of
22 punitive damages.

23 F. With respect to a claim of sexual assault,
24 sexual harassment, sexual discrimination or sexual retaliation
25 in the workplace, any nondisclosure clause or non-disparagement

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~~[bracketed material] = delete~~

1 clause agreed to before the dispute arises shall not be
2 judicially enforceable in instances in which conduct is alleged
3 to have violated federal, tribal or state law.

4 G. Notwithstanding any other provision of this
5 section, at the election of the person alleging conduct
6 constituting a sexual assault, sexual harassment, sexual
7 discrimination or sexual retaliation dispute, or the named
8 representative of a class or in a collective action alleging
9 such conduct, no predispute arbitration agreement or predispute
10 joint-action waiver shall be valid or enforceable with respect
11 to a case that is filed under federal, tribal or state law and
12 relates to the alleged sexual assault, sexual harassment,
13 sexual discrimination or sexual retaliation dispute.

14 H. The provisions of this section are to be
15 liberally construed to fulfill their remedial purpose."

16 **SECTION 2. APPLICABILITY.**--The provisions of this act
17 apply to agreements entered into between a private employer and
18 a prospective, current or former employee or independent
19 contractor on or after June 20, 2025.