

“Speak Out Act” Prevents Enforcement of Pre-Dispute Nondisclosure Agreements That Silence Victims of Sexual Harassment

On December 7, 2022, President Biden signed into law a bipartisan bill to promote disclosure of reports of sexual harassment or assault—the Speak Out Act (the Act). The Act follows the #MeToo-inspired legislation, signed on March 3, 2022, that restricts mandatory arbitration agreements for sexual harassment claims, [discussed here](#).

The Act prevents courts from enforcing any pre-dispute nondisclosure and non-disparagement provisions related to sexual assault and sexual harassment. Employers should note that the Act applies to both employees and independent contractors alike.

The legislation broadly defines a nondisclosure clause as any contractual provision that “requires the parties to the contract or agreement not to disclose or discuss conduct, the existence of a settlement involving conduct, or information covered by the terms and conditions of the contract or agreement.” A non-disparagement clause is a provision in a contract or agreement that “requires one or more parties to the contract or agreement not to make a negative statement about another party that relates to the contract, agreement, claim, or case.” Finally, the Act defines sexual assault and sexual harassment consistent with how they are defined under federal, tribal and state law.

The Act took effect on the day it was signed. Employers are now prohibited from enforcing nondisclosure and non-disparagement clauses against employees or contractors in relation to alleged sexual assault or harassment if such agreements were entered into *before* a dispute or claim regarding the alleged sexual harassment or assault arose. However, nondisclosure and non-disparagement provisions in an agreement entered into *after* an employee or contractor raises a claim or dispute about sexual assault or sexual harassment will still be enforceable.

The legislation clarifies that it does not prohibit or infringe on an employer and employee from protecting trade secrets or proprietary information by contract.

Employers should carefully review their model agreements and practices to

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ensure they do not attempt to apply or enforce any nondisclosure or non-disparagement clauses against employees in relation to any claim or dispute about sexual assault or harassment, if such agreements were signed before the claim or dispute arose.

Please contact [Matt DeLange](#), [Michael Gentry](#) or your Reinhart attorney if you have questions about the change or need help with an employment claim or reviewing model agreements and practices.

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