

[Second Reprint]

SENATE, No. 121

STATE OF NEW JERSEY
218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

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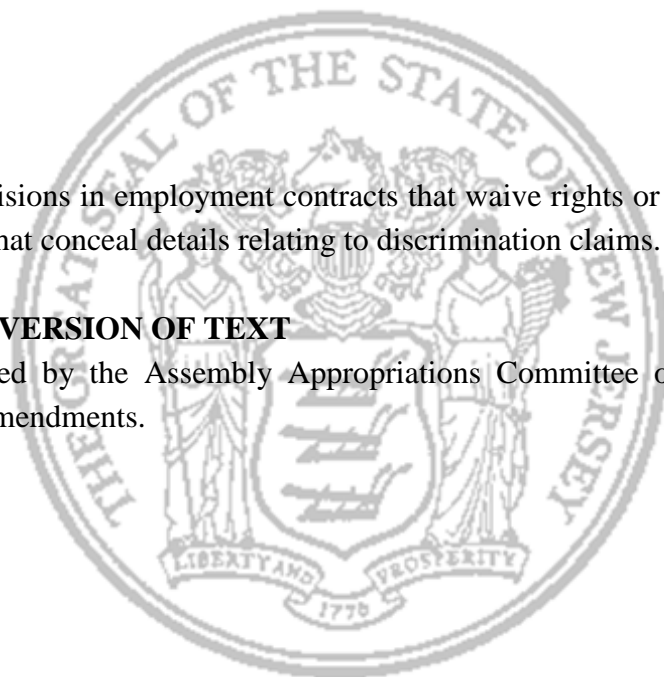
**Senator Ruiz, Assemblywoman Quijano, Assemblymen Armato, Giblin,
Assemblywoman N.Munoz, Assemblymen Johnson, Moriarty,
Assemblywomen Jasey, Lampitt and Downey**

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

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

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

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

41 (2) in which the employee agrees not to disclose proprietary
42 information, which includes only non-public trade secrets, business
43 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:

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