

#MeToo Restricts the Use of NDAs in Sexual Harassment Cases

By Danielle C. Young

More than a viral hashtag, #MeToo has undoubtedly brought sexual abuse and sexual harassment victims validation. Evidencing the continued strength of the #MeToo movement, a Bill, known as the [Speak Out Act](#) aimed at making it easier for employees to speak out in cases of workplace sexual harassment, is headed to the President's desk.

The Bill universally limits the use of mass nondisclosure agreements in the workplace and allows employees to talk about their sexual harassment experiences by invalidating certain nondisclosure agreements that have previously forced workers to remain silent. The proposed legislation does not impose a complete restriction on all nondisclosure agreements in the workplace. Rather, the restriction only applies to certain nondisclosure agreements signed by employees who allege sexual harassment or assault before a dispute arises – not those signed after the dispute as part of a settlement agreement. Nondisclosure agreements are often included as part of the mandatory human resources forms new hires must sign. Advocates of the legislation claim preexisting nondisclosure agreements have prevented employees from bringing sexual harassment to light. As such, the bill is meant to invalidate those generic nondisclosure agreements – such as nondisclosures signed on one's first day of work, prior to any instance of harassment. Employers should be mindful that the Speak Out Act makes only the agreements signed during the onboarding process unenforceable. The policy would not prevent employers from making a nondisclosure agreement part of any settlement they reach with a worker over harassment or assault claims. The limitation also does not apply to other kinds of workplace complaints, such as wage theft or discrimination claims, for example.

The intent of the Bill is to hold abusers accountable and change the culture within the workplace. The same purpose formed the basis for a recent law that bans mandatory arbitration where workers allege sexual harassment or assault claims.

Please contact a listed Roetzel attorney should you have any questions regarding these important updates.

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