

# The Speak Out Act Ends the Silencing of Sexual Assault Victims Through Nondisclosure and Non-Disparagement Agreements

**By Lauren Smith**

On December 7, 2022, the Speak Out Act (“Act”) was signed into law by President Biden to combat sexual assault and sexual harassment in the workplace and ensure that victims and survivors are free to disclose their abuse. The Act renders judicially unenforceable any clause in a nondisclosure or non-disparagement agreement related to sexual harassment or sexual assault claims, provided that the agreement was entered into before the dispute arose. The Act is not retroactive, applying to claims filed on or after the date of enactment, and is applicable to claims filed under state, federal or tribal law. Additionally, the Act does not supersede any state law governing nondisclosure or non-disparagement clauses that are at least as protective of an individual’s right to speak freely as the Act.

The Act defines “sexual assault disputes” as any dispute that involves a “nonconsensual sexual act or sexual conduct” as those terms are defined in Section 2246 of Title 18, United States Code, or applicable tribunal or state law. “Sexual harassment disputes” are defined as any disputes related to conduct that constitutes sexual harassment pursuant to applicable federal, tribal or state law. (S.B. 4524.)

Importantly, the Act does not prohibit the inclusion of a clause related to a sexual harassment or sexual assault claim in a nondisclosure or non-disparagement agreement executed after the allegations have been made. In other words, based on the plain language of the Act, employers may continue to include nondisclosure and non-disparagement clauses related to sexual assault or sexual harassment claims in settlement and separation agreements resolving claims of sexual assault or harassment.

What does this mean for employers? Employers should review the language of their current confidentiality, nondisclosure, and non-disparagement clauses in employment agreements, separation agreements, or settlement agreements to ensure compliance with the Act. At a minimum, any such agreement should be revised to include a statement indicating that the clauses do not pertain to sexual assault or harassment claims.

If you have any questions regarding the newly passed Speak Out Act or any other employment related matters, please contact any of the listed attorneys.

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