

Public Presentation
March 24, 2024

To - Santa Clara County Grand Jury

Re - Santa Clara Investigation

In 2018, California enacted the Stand Together Against Non-Disclosure (STAND) Act, SB-820, a piece of legislation passed during the height of the #MeToo movement. The STAND Act prohibited the use of settlement agreements to prevent employees from disclosing factual information underlying a complaint filed in court or before an administrative agency about specific acts, which included sexual assault, sexual harassment, workplace harassment or discrimination based on sex, failure to prevent such an act, or retaliation against a person for reporting such an act.

In 2021, California's Silenced No More Act, SB-331, expanded the scope of the STAND Act. SB-331 prohibited employers from restricting an employee's disclosure of factual information related to claims filed before a court or administrative agency that pertained to any workplace harassment or discrimination claim, not just sex-based claims. Cal. Civ. Pro. Code § 1001(a). SB-311 further prohibited employers from requiring employees to sign an agreement that would restrict an employee's ability to disclose information related to unlawful acts in the workplace. Cal. Gov't Code § 12964.5(a)(1)(B)(i). It also prohibited employers from including such restrictions in an employee's separation agreement. § 12964.5(a)(2)(b)(1)(A). There is a significant carve-out in the California law, which does not exist in the Washington law. The California law expressly excludes "negotiated settlement agreements" resolving legal claims filed in court, before an administrative agency, in an alternative dispute resolution forum, or through an employer's internal complaint process. § 12964.5(d)(1). The statute explains that "negotiated" means that "the agreement is voluntary, deliberate, and informed, the agreement provides consideration of value to the employee, and that the employee is given notice and an opportunity to retain an attorney or is represented by an attorney." § 12964.5(d)(2).

In summary, an employer is permitted to include a non-disclosure and non-disparagement provision in a negotiated settlement. However, an employee can still disclose "factual information" about specific acts underlying their employment claims filed in court or before an administrative agency, even if those claims are part of a negotiated settlement.

Source: Alia Al-Khatib, National Law Review

POST MEETING MATERIAL