



# Attention New York Employers: New Prohibitions for Settlement Agreements Resolving Discrimination Claims

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Effective November 17, 2023, Governor Hochul signed a new law impacting settlement agreements resolving claims of harassment, discrimination and retaliation. The new law, [S4516](#) amends Section 5-336 of the New York General Obligations Law (known as New York's #MeToo statute), which prohibits employers' use of nondisclosure provisions in any settlement agreement resolving claims of discrimination, unless the condition of confidentiality is the complainant's preference. Section 5-336 specifically targets provisions seeking to prevent complainants from disclosing the underlying facts and circumstances concerning incidents of harassment or discrimination, as part of a larger employee-friendly trend in New York legislation.

## How does the new law amend Section 5-336?

**The new law provides that a release of any claim including unlawful harassment, discrimination or retaliation is *not enforceable* if it contains any of the following provisions:**

- A requirement that the complainant pay liquidated damages for violating a nondisclosure clause or nondisparagement clause;
- A requirement that the complainant forfeit all or part of the consideration for the agreement for violating a nondisclosure or nondisparagement clause; or
- A requirement that the complainant state or disclaim that the complainant was not in fact subject to unlawful discrimination, including discriminatory harassment or retaliation.

**In addition, the new law makes several key changes to Section 5-336.**

- First, it expands the scope of Section 5-336 to include claims of discrimination, harassment and retaliation.
- Second, the law now applies to settlement agreements with independent contractors and not just employees and potential employees.
- Third, the law now allows a complainant to waive the full 21-day waiting period to consider a settlement agreement containing a confidentiality provision preventing the disclosure of

underlying facts and circumstances of a discrimination claim. The complainant still retains the right to revoke their acceptance within seven days of signing. The law previously mandated that a complainant wait the full 21-day period before signing and complainants now have “up to 21 days” to sign. It is important to note that Section 5003-b of New York Civil Practice Law & Rules (CPLR) still requires a 21-day waiting period before a complainant signs a settlement agreement containing a confidentiality provision preventing the disclosure of underlying facts and circumstances of a discrimination claim brought in litigation or an administrative proceeding.

## What should employers do now?

Employers should carefully review any settlement agreements entered into after November 17<sup>th</sup> and any release agreements currently being drafted and negotiated, particularly if they contain nondisclosure provisions relating to the facts or circumstances of the underlying claims, a liquidated damages provision or a forfeiture provision.

If you have questions concerning employee settlement agreements, please contact a member of [Kelley Drye's Labor and Employment team](#).