As we previously reported, New York enacted legislation on March 30, 2019 that prohibits New York employers from requiring nondisclosure of the underlying facts and circumstances of a sexual harassment claim unless the condition of confidentiality is the complainant’s preference. N.Y. Gen. Oblig. Law § 5-336.

Effective October 11, 2019, the procedural and substantive requirements will change in three significant ways:

1. **Broader Protections: Applies to Any Employee Raising a Discrimination Claim**

   While previously the law covered only those nondisclosure agreements (“NDAs”) concerning a claim of sexual harassment, effective October 11, 2019, the law will extend this coverage to any claim of discrimination. This vastly expands the range of potential employee complainants now given protection by the statute. Notably, the definition of “discrimination” is not limited to unlawful discrimination under the New York State Human Rights Law.

   Employers remain free to include in settlement agreements provisions requiring nondisclosure of the fact of or amount of a settlement; the law covers only NDAs prohibiting the disclosure of the facts and circumstances underlying a discrimination claim.

2. **NDA Must Be Provided in English and in Employee’s Primary Language**

   As a new procedural requirement, New York employers must now provide the NDA in writing in both English and the primary language of the complainant, if it is not English.

   The same unwaivable 21-day consideration (and 7-day revocation) periods for consenting to an NDA remain in place.

3. **NDA Must Allow Participation in Agency Proceedings and Disclosures Necessary for Receiving Public Benefits**

   Finally, NDAs cannot restrict or prohibit the complainant from: “(i) initiating, testifying, assisting, complying with a subpoena from, or participating in any manner with an investigation conducted by the appropriate local, state, or federal agency; or (ii) filing or disclosing any facts necessary to receive unemployment insurance, Medicaid, or other public benefits to which the complainant is entitled.”
Additionally, effective January 1, 2020, NDAs must include a statement that the employee is not prohibited from speaking with law enforcement, the Equal Employment Opportunity Commission, New York State Division of Human Rights, a local commission on human rights, or an attorney retained by the employee or potential employee. Otherwise, the NDA is void and unenforceable.

If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings New York lawyers:

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