

HRAGC LEGAL UPDATE

DECEMBER 15, 2022

FEDERAL

Congress

On December 7, 2022, President Biden signed the “Speak Out Act” which became effective that day. The Act prohibits the enforcement of blanket non-disclosure and non-disparagement clauses that are entered into before any allegation of sexual assault or sexual harassment. If such a provision is agreed to before such a dispute arises it will be judicially unenforceable. Congress found that such provisions “can perpetuate illegal conduct by silencing those who are survivors of illegal sexual harassment and assault or illegal retaliation” and that they protect perpetrators, “enabling them to continue their abuse.” The Act is in line with the law signed in March to prevent the forced arbitration of sexual harassment and sexual assault claims.

A non-disclosure clause is defined in the Act as “a provision in a contract or agreement that requires the parties to the contract or agreement not to disclose or discuss conduct, the existence of a settlement involving conduct, or information covered by the terms and conditions of the contract or agreement.” A non-disparagement clause is defined as a “provision in a contract or agreement that requires 1 or more parties to the contract or agreement not to make a negative statement about another party that relates to the contract, agreement, claim, or case.”

Because the Act applies to pre-dispute clauses, employers remain able to include non-disclosure and non-disparagement clauses in settlement agreements and separation agreements that resolve sexual harassment or sexual assault claims. The Act does not limit employers seeking to protect trade secrets or other proprietary information.

The federal law does not prevent states from enacting more restrictive laws. Employers should be mindful of what state and local laws require.

Employers should review their employment agreements and policies to ensure compliance with this Act.

NEW HAMPSHIRE

Legislature

Most Legislative Service Requests (LSRs) have been filed. The House filing period is closed and the Senate period is nearly closed. The employment related LSRs are noted below. There may be a few more.

LSR 162	Relative to an employee’s unused earned time. The 2022 bill was targeted to situations where one company buys the assets - but not the liabilities - of another company and the employees then lose their accrued unused vacation time if such accrual had been allowed. --> Killed in 2022, 172-164, following a 12-11 committee vote.
LSR 7	Relative to the state minimum hourly rate. The 2022 bill raised the minimum wage to \$15/hour by 2024 and then indexed it to inflation. --> Tabled in 2022, 191-158, following an 11-9 committee vote.

LSR 9	Prohibiting payment of subminimum wages. The 2022 bill repealed almost all exemptions to the minimum wage law - tipped employees, mostly. --> Tabled in 2022, 187-149, following an 11-10 committee vote.
LSR 307	Relative to the duration of unemployment benefits. The 2022 bill, as amended, reduced the number of weeks (current law is 26 weeks) by 1 for each 1/2-point drop in the unemployment rate below 8%. The plan bottoms out at 16 weeks when the unemployment rate is 3% or less.
LSR 45	Relative to employment restrictions for registered sex offenders.
LSR 121	Relative to employment protection for participants in the therapeutic cannabis program.
LSR 389	Prohibiting discharge of volunteer firefighters or volunteer EMTs from other employment. The 2022 bill prohibited discharging or disciplining an employee who is a volunteer firefighter or EMT and whose failure to report for work was due to responding to an emergency. --> Killed in 2022 by a voice vote after a 12-8 committee vote.
LSR 105	Prohibiting employers from engaging in certain anti-union activities. The 2022 bill prohibited actions such as discriminating against or permanently replacing strike participants, withholding employment in order to influence positions on collective bargaining, forcing employees to watch videos casting unions in unfavorable light. --> Killed in 2022, 181-149, following a 11-10 committee vote.
LSR 195	Commemorating the first labor strike in the United States by women.
LSR 397	Relative to the certification of a collective bargaining unit.
LSR 39	Relative to employee protections from COVID-19 in the workplace. The 2022 bill stated that employees have a right to be vaccinated against Covid-19 and to use Personal Protective Equipment, without exception. --> Killed in 2022 by a voice vote after an 11-9 committee vote.
LSR 168	Relative to youth employment during the school year and at night. Likely a repeal of sections of the 2022 youth employment law that eliminated the 10PM curfew and increased the amount of hours allowed during the school year.
LSR 395	Adopting section 1910 OSHA standards for public sector employees in New Hampshire.

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