

1 **EMPLOYMENT CONFIDENTIALITY AMENDMENTS**

2 2024 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Kera Birkeland**

5 Senate Sponsor: Todd D. Weiler

7 **LONG TITLE**

8 **General Description:**

9 This bill enacts provisions related to sexual assault and sexual harassment in the
10 workplace.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ makes nondisclosure and non-disparagement clauses (confidentiality clauses),
15 related to sexual assault and sexual harassment, as a condition of employment,
16 unenforceable; and
- 17 ▶ provides that a person who attempts to enforce a confidentiality clause described in
18 the preceding paragraph may be liable for costs and attorney fees under certain
19 conditions.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 This bill provides a special effective date.

24 This bill provides retrospective operation.

25 **Utah Code Sections Affected:**

26 ENACTS:

27 **34A-5-114**, Utah Code Annotated 1953

29 *Be it enacted by the Legislature of the state of Utah:*

30 Section 1. Section 34A-5-114 is enacted to read:

31 **34A-5-114. Limitations on enforceability of nondisclosure and non-disparagement**
32 **clauses -- Retaliation prohibited.**

33 (1) As used in this section:

34 (a) "Confidentiality clause" means a nondisclosure clause or a non-disparagement
35 clause.

36 (b) "Employee" means a current or a former employee.

37 (c) "Nondisclosure clause" means an agreement between an employee and employer

38 that:

39 (i) prevents, or has the effect of preventing, an employee from disclosing or discussing:

40 (A) sexual assault;

41 (B) allegations of sexual assault;

42 (C) sexual harassment; or

43 (D) allegations of sexual harassment.

44 (d) "Non-disparagement clause" means an agreement between an employee and
45 employer that prohibits, or has the effect of prohibiting, an employee from making a negative
46 statement that is:

47 (i) about the employer; and

48 (ii) related to:

49 (A) a claim of sexual assault or sexual harassment;

50 (B) a sexual assault dispute; or

51 (C) a sexual harassment dispute.

52 (e) "Post-employment restrictive covenant" means the same as that term is defined in
53 Section [34-51-102](#).

54 (f) "Proprietary information" means an employer's business plan or customer
55 information.

56 (g) "Retaliate" means taking an adverse action against an employee because the
57 employee made an allegation of sexual harassment or assault, including:

- 58 (i) discharge;
- 59 (ii) suspension;
- 60 (iii) demotion; or
- 61 (iv) discrimination in the terms, conditions, or privileges of employment.
- 62 (h) "Sexual assault" means:
- 63 (i) conduct that would constitute a violation of 18 U.S.C. Secs. 2241 through 2244; or
- 64 (ii) criminal conduct described in Title 76, Chapter 5, Part 4, Sexual Offenses.
- 65 (i) "Sexual assault dispute" means a dispute between an employer and the employer's
- 66 employee relating to alleged sexual assault.
- 67 (j) "Sexual harassment" means conduct that is a violation of:
- 68 (i) Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e et seq.; or
- 69 (ii) Subsection [34A-5-106](#)(1)(a)(i) prohibiting harassment on the basis of sex, sexual
- 70 orientation, or gender.
- 71 (k) "Sexual harassment dispute" means a dispute between an employer and the
- 72 employer's employee relating to alleged sexual harassment.
- 73 (2) (a) A confidentiality clause regarding sexual misconduct, as a condition of
- 74 employment, is against public policy and is void and unenforceable.
- 75 (b) After an employee makes an allegation of sexual harassment or sexual assault, an
- 76 employer of any sized business, regardless of Subsection [34-5-102](#)(1)(i)(D):
- 77 (i) may not retaliate against the employee because the employee made an allegation of
- 78 sexual harassment or assault; or
- 79 (ii) may not retaliate based on an employee's refusal to enter into a confidentiality
- 80 clause or an employment contract that, as a condition of employment, contains a confidentiality
- 81 clause or an employment contract that, as a condition of employment, contains a confidentiality
- 82 clause.
- 83 (c) An employee may, within three business days after the day on which the employee
- 84 agrees to a settlement agreement that includes a confidentiality clause regarding sexual
- 85 misconduct, withdraw from the settlement agreement.

86 (3) An employer who attempts to enforce a confidentiality clause in violation of this
87 section:

88 (a) is liable for all costs, including reasonable attorney fees, resulting from legal action
89 to enforce the confidentiality clause; and

90 (b) is not entitled to monetary damages resulting from a breach of a confidentiality
91 clause.

92 (4) This section does not:

93 (a) prohibit an agreement between an employee who alleges sexual assault or sexual
94 harassment and an employer from containing a nondisclosure clause, a non-disparagement
95 clause, or any other clause prohibiting disclosure of:

96 (i) the amount of a monetary settlement; or

97 (ii) at the request of the employee, facts that could reasonably lead to the identification
98 of the employee;

99 (b) prohibit an employer from requiring an employee to:

100 (i) sign a post-employment restrictive covenant; or

101 (ii) agree not to disclose an employer's non-public trade secrets, proprietary
102 information, or confidential information that does not involve illegal acts;

103 (c) authorize an employee to:

104 (i) disclose data otherwise protected by law or legal privilege; or

105 (ii) knowingly make statements or disclosures that are false or made with reckless
106 disregard of the truth;

107 (d) prohibit an employee from discussing sexual misconduct or allegations of sexual
108 misconduct in a civil or criminal case when subpoenaed if the sexual misconduct or allegations
109 of sexual misconduct are against the individual whom the employee alleged engaged in sexual
110 misconduct;

111 (e) permit a disclosure that would violate state or federal law; or

112 (f) limit other grounds that may exist at law or in equity for the unenforceability of a
113 confidentiality clause.

114 Section 2. **Effective date.**

115 If approved by two-thirds of all members elected to each house, this bill takes effect
116 upon approval by the governor, or the day following the constitutional time limit of Utah
117 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
118 the date of veto override.

119 Section 3. **Retrospective operation.**

120 This bill provides retrospective operation to January 1, 2023.