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HOUSE BILL 1795

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State of Washington

67th Legislature

2022 Regular Session

By Representatives Berry and Walen

Prefiled 01/06/22.

1 AN ACT Relating to prohibiting nondisclosure and nondisparagement  
2 provisions from employers regarding illegal acts of discrimination,  
3 harassment, retaliation, wage and hour violations, and sexual  
4 assault; adding a new section to chapter 49.44 RCW; creating new  
5 sections; repealing RCW 49.44.210; and prescribing penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature recognizes that there  
8 exists a strong public policy in favor of the disclosure of illegal  
9 discrimination, illegal harassment, illegal retaliation, wage and  
10 hour violations, and sexual assault, that is recognized as illegal  
11 under Washington state, federal, or common law, or that is recognized  
12 as against a clear mandate of public policy, that occurs at the  
13 workplace, at work-related events coordinated by or through the  
14 employer, between employees, or between an employer and an employee,  
15 whether on or off the employment premises. Nondisclosure and  
16 nondisparagement provisions in agreements between employers and  
17 current, former, prospective employees, and independent contractors  
18 have become routine and perpetuate illegal conduct by silencing those  
19 who are victims or who have knowledge of illegal discrimination,  
20 illegal harassment, illegal retaliation, wage and hour violations, or  
21 sexual assault. It is the intent of the legislature to prohibit

1 nondisclosure and nondisparagement provisions in agreements, which  
2 defeat the strong public policy in favor of disclosure.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.44  
4 RCW to read as follows:

5 (1) A provision in an agreement by an employer and an employee  
6 not to disclose or discuss conduct, or the existence of a settlement  
7 involving conduct, that the employee reasonably believed under  
8 Washington state, federal, or common law to be illegal  
9 discrimination, illegal harassment, illegal retaliation, a wage and  
10 hour violation, or sexual assault, or that is recognized as against a  
11 clear mandate of public policy, is void and unenforceable. Prohibited  
12 nondisclosure and nondisparagement provisions in agreements concern  
13 conduct that occurs at the workplace, at work-related events  
14 coordinated by or through the employer, between employees, or between  
15 an employer and an employee, whether on or off the employment  
16 premises. Prohibited nondisclosure and nondisparagement provisions  
17 include those contained in employment agreements, independent  
18 contractor agreements, agreements to pay compensation in exchange for  
19 the release of a legal claim, or any other agreement between an  
20 employer and an employee.

21 (2) This section does not prohibit the enforcement of a provision  
22 in any agreement that prohibits the disclosure of the amount paid in  
23 settlement of a claim.

24 (3) It is a violation of this section for an employer to  
25 discharge or otherwise discriminate or retaliate against an employee  
26 for disclosing or discussing conduct that the employee reasonably  
27 believed to be illegal harassment, illegal discrimination, illegal  
28 retaliation, wage and hour violations, or sexual assault, that is  
29 recognized as illegal under state, federal, or common law, or that is  
30 recognized as against a clear mandate of public policy, occurring in  
31 the workplace, at work-related events coordinated by or through the  
32 employer, between employees, or between an employer and an employee,  
33 whether on or off the employment premises.

34 (4) It is a violation of this section for an employer to request  
35 or require that an employee enter into any agreement provision that  
36 is prohibited by this section.

37 (5) It is a violation of this section for an employer to attempt  
38 to enforce a provision of an agreement prohibited by this section,  
39 whether through a lawsuit, a threat to enforce, or any other attempt

1 to influence a party to comply with a provision in any agreement that  
2 is prohibited by this section.

3 (6) This section does not prohibit an employer and an employee  
4 from protecting trade secrets, proprietary information, or  
5 confidential information that does not involve illegal acts.

6 (7) An employer who violates this section after the effective  
7 date of this section is liable in a civil cause of action for actual  
8 or statutory damages of \$10,000, whichever is more, as well as  
9 reasonable attorneys' fees and costs.

10 (8) For the purposes of this section, "employee" means a current,  
11 former, or prospective employee or independent contractor.

12 (9) A nondisclosure or nondisparagement provision in any  
13 agreement signed by an employee who is a Washington resident is  
14 governed by Washington law.

15 (10) The provisions of this section are to be liberally construed  
16 to fulfill its remedial purpose.

17 (11) As an exercise of the state's police powers and for remedial  
18 purposes, this section is retroactive from the effective date of this  
19 section only to invalidate nondisclosure or nondisparagement  
20 provisions in agreements created before the effective date of this  
21 section. This subsection does not apply to nondisclosure or  
22 nondisparagement provisions contained in an agreement to pay  
23 compensation in exchange for the release of a legal claim.

24 NEW SECTION. **Sec. 3.** The repeal in section 4 of this act does  
25 not affect any existing right acquired or liability or obligation  
26 incurred under the statute repealed in this act or under any rule or  
27 order adopted under that statute, nor does it affect any proceeding  
28 instituted under that statute.

29 NEW SECTION. **Sec. 4.** RCW 49.44.210 (Nondisclosure agreements  
30 that prevent disclosure of sexual assault or sexual harassment  
31 prohibited—Settlement agreement exception) and 2018 c 117 s 1 are  
32 each repealed.

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