

October 11, 2021

# California's Silenced No More Act – What Employers Should Know

---

## New California Law Expands Prohibition of Settlement NDAs

---

### SUMMARY

On October 7, California's Silenced No More Act, S.B. 331, was signed into law. The law, which takes effect January 1, 2022, expands upon an existing California law that prohibits the use of non-disclosure agreements ("NDAs") to settle employment claims based on sex discrimination, harassment, or retaliation to broadly prohibit NDAs in settlement agreements involving workplace harassment or discrimination on any protected basis, not solely on the basis of sex. In this memorandum, we discuss the Silenced No More Act and its implications for settlements of harassment and discrimination claims brought by employees in California.

---

### CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1001

**STAND Act.** A California law passed in 2018 in response to the #MeToo movement, known as the STAND (Stand Together Against Non-Disclosures) Act and codified as California Code of Civil Procedure Section 1001, prohibited settlement terms that prevent the disclosure of factual information underlying a claim based on acts of sexual assault or sexual harassment, or acts of workplace discrimination, harassment, or related retaliation on the basis of sex. Exempted from this prohibition were provisions that shield the identity of the complainant and all facts that could lead to the discovery of their identity, if included in the settlement agreement at the request of the complainant.

**Silenced No More Act.** The new law amends Code of Civil Procedure Section 1001 to expand the prohibition of NDAs entered into on or after January 1, 2022 for all acts of workplace discrimination and harassment, including acts on the basis of race, religion, disability, medical condition, age, and other protected characteristics as provided in Sections 12940 and 12955 of the California Government

---

## SULLIVAN & CROMWELL LLP

Code. Amended Section 1001 preserves the exception allowing for provisions that shield the claimant's identity and all facts that could lead to the discovery of their identity, if such provision is included at the request of the claimant.

Amended Section 1001 preserves the existing protection against disclosure of the settlement amount. Therefore, employers can still insist on clauses that prevent the disclosure of the amount of money paid to settle a claim.

---

### SECTION 12964.5 OF THE CALIFORNIA GOVERNMENT CODE

**Silenced No More Act.** California's new law also amends Section 12964.5 of the Government Code to prohibit non-disparagement agreements as a condition of employment that deny an employee's right to discuss information about unlawful acts in the workplace. This amendment also applies to severance agreements, in that a severance agreement cannot contain any provision preventing an employee from discussing unlawful acts in the workplace. An exception applies if the agreement includes a specific carve-out providing for the employee's right to discuss workplace conduct that the employee has "reason to believe" is unlawful. Any agreement that has the purpose or effect of denying an employee's right to disclose information about unlawful acts in the workplace is against public policy and unenforceable under amended Section 12964.5.

---

### COMPARISON TO NEW YORK STATE HUMAN RIGHTS LAW

Similar legislation was passed in New York in October 2019 amending the New York State Human Rights Law to expand existing prohibitions on the use of NDA provisions in agreements settling sexual harassment claims to apply to claims of harassment or discrimination against any protected class. New York law also incorporates an exception to this prohibition in the event that it is the "complainant's preference" that an NDA provision be included as part of the settlement and certain procedural requirements are satisfied, including that the complainant be given 21 days to review the terms of the NDA provision and seven days to revoke after signing. New York's Human Rights Law also requires that NDA provisions in agreements settling claims of discrimination expressly include a statement that the provision does not prohibit the individual "from speaking with law enforcement, the equal employment opportunity commission, the state division of human rights, a local commission on human rights, or an attorney retained by the employee or potential employee." In contrast with California's Silenced No More Act, which applies to claims filed in a civil action or a complaint filed in an administrative action, New York's law applies where NDA provisions are included in settlement agreements with individuals who have (1) made an internal, good faith complaint of discrimination or harassment; (2) complained or alleged, in good faith, through an attorney that they were subject to discriminatory or harassing conduct; and/or (3) filed a good-faith complaint of discrimination or harassment with a court or federal, state, or local administrative agency.

**ADDITIONAL INFORMATION**

To stay informed of litigation and regulatory developments that affect the workplace, [click here](#) to subscribe to our *Legal Developments Affecting the Workplace* [blog](#).

\* \* \*

## SULLIVAN & CROMWELL LLP

### ABOUT SULLIVAN & CROMWELL LLP

Sullivan & Cromwell LLP is a global law firm that advises on major domestic and cross-border M&A, finance, corporate and real estate transactions, significant litigation and corporate investigations, and complex restructuring, regulatory, tax and estate planning matters. Founded in 1879, Sullivan & Cromwell LLP has more than 875 lawyers on four continents, with four offices in the United States, including its headquarters in New York, four offices in Europe, two in Australia and three in Asia.

### CONTACTING SULLIVAN & CROMWELL LLP

This publication is provided by Sullivan & Cromwell LLP as a service to clients and colleagues. The information contained in this publication should not be construed as legal advice. Questions regarding the matters discussed in this publication may be directed to any of our lawyers or to any other Sullivan & Cromwell LLP lawyer with whom you have consulted in the past on similar matters. If you have not received this publication directly from us, you may obtain a copy of any past or future publications by sending an e-mail to [SCPublications@sullcrom.com](mailto:SCPublications@sullcrom.com).