

Revisit Your Non-Disclosure Agreements or Risk #MeToo Issues

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As you probably know, non-disclosure agreements signed by employees are legally binding. These may prevent workers from speaking out about workplace practices, including #MeToo issues. Newly introduced federal legislation targets NDAs that silence employees reporting sexual harassment. This is already a matter of law in some states, including California and Washington.

Lift Our Voices, a pro-worker policy group headed by former Fox News anchor Gretchen Carlson, has spurred the House introduction by a Democrat of the SPEAK OUT Act (H.R. 8227). As with the last #MeToo related law passed, SPEAK OUT is backed by several GOP representatives already. Lift Our Voices expects an introduction of a similar Senate bill, apparently to be backed by Republican senators, including Lindsey Graham. Lift Our Voices supported another #MeToo-related bill, H.B. 4445, through its passage. That law nullifies provisions that force workers to arbitrate #MeToo claims rather than have their day in court.

The SPEAK OUT Act applies to pre-dispute non-disclosure agreements signed before an issue arises. However, if a business is sued by an employee alleging sex discrimination or harassment, it would still be legal to include an NDA in a settlement agreement or release.

Take a look at NDAs you're using. It might be a good time to revise them, given the bipartisan support of this bill and state bills. I'm speculating here, but a court could go on to invalidate other provisions of the NDA if it contains this type of provision.