

HOUSE BILL REPORT

SSB 5996

As Passed House:
February 27, 2018

Title: An act relating to encouraging the disclosure and discussion of sexual harassment and sexual assault in the workplace.

Brief Description: Encouraging the disclosure and discussion of sexual harassment and sexual assault in the workplace.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Keiser, Darneille, Frockt, Van De Wege, Pedersen, Hunt, Chase, Saldaña, Kuderer and Hasegawa).

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/15/18, 2/22/18 [DP].

Floor Activity:

Passed House: 2/27/18, 98-0.

Brief Summary of Substitute Bill

- Prohibits an employer from requiring an employee, as a condition of employment, to sign a nondisclosure agreement that prevents the employee from disclosing sexual harassment or sexual assault occurring in the workplace, at work-related events coordinated by or through the employer, or between employees or between an employer and employee, off the employment premises.
- Provides that such agreement or waiver is against public policy and therefore void and unenforceable.
- Makes it an unfair practice under the Washington Law Against Discrimination for an employer to discharge or retaliate against an employee for disclosing or discussing sexual harassment or sexual assault occurring in the workplace.
- Allows settlement agreements to have confidentiality provisions.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass. Signed by 7 members: Representatives Sells, Chair; Gregerson, Vice Chair; McCabe, Ranking Minority Member; Pike, Assistant Ranking Minority Member; Doglio, Frame and Manweller.

Staff: Trudes Tango (786-7384).

Background:

The federal law, Title VII of the Civil Rights Act of 1964, and the Washington Law Against Discrimination (WLAD) prohibit discrimination in employment based on sex. Sexual harassment is considered a form of sex discrimination and includes "quid pro quo" conduct and behavior that unreasonably interferes with work performance or creates an intimidating, hostile, or offensive work environment.

The Human Rights Commission (Commission) administers and enforces the WLAD. The Commission investigates complaints alleging discriminatory unfair practices committed by employers and attempts to eliminate any unfair practice through conference, conciliation, and persuasion. An aggrieved employee may also bring a civil cause of action based on employment discrimination.

State agencies are statutorily required to have policies defining and prohibiting sexual harassment in the workplace. Public school districts must also have written policies concerning sexual harassment. For purposes of school district policies, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, or other verbal or physical conduct or communication of a sexual nature if:

- submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining an education or employment;
- submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's education or employment; or
- that conduct or communication has the purpose or effect of substantially interfering with an individual's educational or work performance, or of creating an intimidating, hostile, or offensive educational or work environment.

A nondisclosure agreement is a contract between parties that limits the disclosure of information to third parties. Generally, state law governs contracts. Washington courts have held that contracts that are contrary to public policy are void and unenforceable.

Summary of Bill:

An employer may not require an employee, as a condition of employment, to sign a nondisclosure agreement, waiver, or other document that prevents the employee from disclosing sexual harassment or sexual assault occurring in the workplace, at work-related events coordinated by or through the employer, or between employees or an employer and employee, off the employment premises.

A nondisclosure agreement, waiver, or other document that has the purpose or effect of preventing the employee from disclosing or discussing sexual harassment or sexual assault occurring in the workplace, at work-related events coordinated by or through the employer,

or between employees or an employer and employee, off the employment premises is against public policy and is void, and unenforceable.

It is an unfair practice under the WLAD for an employer to discharge or otherwise retaliate against an employee for disclosing or discussing sexual harassment or sexual assault occurring in the workplace, at work-related events coordinated by or through the employer, or between employees, or between an employer and an employee, off the employment premises.

Settlement agreements containing confidentiality provisions are not prohibited. "Employee" does not include human resources staff, supervisors, or managers when they are expected to maintain confidentiality as part of their assigned job duties. "Employee" also does not include those persons who are asked to participate in an open and ongoing investigation into alleged sexual harassment and are asked to maintain confidentiality during the pendency of that investigation.

Definitions for "sexual assault," "sexual contact," and "sexual harassment" are provided. Sexual assault means any type of sexual contact or behavior that occurs without the explicit consent of the recipient. Sexual harassment has the same meaning as the term used in school districts' sexual harassment policies.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is one of three bills addressing common place employment practices. Nondisclosure agreements (NDA) create a problem for employees when it comes to issues like sexual harassment. An employee may need or want to go outside of the employment context and talk to the Commission or the police, if there's been sexual assault. An NDA signed on the first day of employment can end up being a deterrent for reporting sexual harassment and sexual assault.

(Opposed) None.

Persons Testifying: Senator Keiser, prime sponsor; and Rebecca Johnson, Washington Coalition of Sexual Assault Programs.

Persons Signed In To Testify But Not Testifying: None.