

FINAL BILL REPORT

ESSB 6068

C 118 L 18
Synopsis as Enacted

Brief Description: Concerning the applicability of nondisclosure agreements in civil actions for sexual harassment or assault.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Frockt, Pedersen, Palumbo, Conway, Saldaña, Kuderer and Mullet).

Senate Committee on Law & Justice
House Committee on Judiciary

Background: A nondisclosure agreement (NDA) is a form of contract between two or more parties that restricts the disclosure of confidential material or information to third parties. In general, state contract law governs NDAs. Employers commonly use NDAs to protect trade secrets or intellectual property. NDAs may be required as a condition of employment when an applicant is first hired, and in severance or separation agreements when an employee leaves. NDAs are also used in settlements as a means to resolve disputes or civil lawsuits. Typically, in NDAs one party agrees to drop a lawsuit or potential lawsuit in return for payment and silence. Breaching a signed NDA contract may result in the loss of settlement money and gives the defendant the right to sue.

There are limitations on NDAs. NDAs may not restrict a person's right to report harassment, discrimination, and criminal activity to authorities. Under the Washington Law Against Discrimination (WLAD), a person has the right to be free from discrimination related to a protected status, such as race, national origin, sex, veteran or military status, sexual orientation, and disability. An employer may not discriminate against a person because of the person's protected status. Sexual harassment is a form of sex discrimination under WLAD and Title VII of the Civil Rights Act of 1964.

Summary: In civil lawsuits and administrative actions relating to sexual harassment or sexual assault, a NDA does not affect discovery or the availability of witness testimony for past instances of sexual harassment or sexual assault. NDAs include arbitration agreements or decisions. Any provision of a nondisclosure policy or agreement that would limit, prevent, or punish disclosure related to discovery and witness testimony is contrary to public policy and unenforceable.

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.

Upon motion of any party supported by affidavit or sworn declaration, or without motion but upon the court's own accord, the court shall enter orders to protect the identity of any victim, unless such person consents to disclosure.

The bill does not alter the standard for admissibility of evidence and it applies to actions pending as of the effective date and actions filed after the effective date.

Votes on Final Passage:

Senate	48	0	
House	98	0	(House amended)
Senate	49	0	(Senate concurred)

Effective: June 7, 2018