

RCW 49.44.211 Prohibited nondisclosure and nondisparagement provisions—Retaliation by employer prohibited—Penalties—

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

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

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

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

(5) It is a violation of this section for an employer to attempt to enforce a provision of an agreement prohibited by this section, whether through a lawsuit, a threat to enforce, or any other attempt to influence a party to comply with a provision in any agreement that is prohibited by this section.

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

(7) An employer who violates this section after June 9, 2022, is liable in a civil cause of action for actual or statutory damages of \$10,000, whichever is more, as well as reasonable attorneys' fees and costs.

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

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

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

(11) As an exercise of the state's police powers and for remedial purposes, this section is retroactive from June 9, 2022, only to invalidate nondisclosure or nondisparagement provisions in agreements

created before June 9, 2022, and which were agreed to at the outset of employment or during the course of employment. This subsection allows the recovery of damages only to prevent the enforcement of those provisions. This subsection does not apply to a nondisclosure or nondisparagement provision contained in an agreement to settle a legal claim. [2022 c 133 s 2.]

Intent—2022 c 133: "The legislature recognizes that there exists a strong public policy in favor of the disclosure of illegal discrimination, illegal harassment, illegal retaliation, wage and hour violations, and sexual assault, that is recognized as illegal under Washington state, federal, or common law, or that is recognized as against a clear mandate of public policy, that occurs at the workplace, at work-related events coordinated by or through the employer, between employees, or between an employer and an employee, whether on or off the employment premises. Nondisclosure and nondisparagement provisions in agreements between employers and current, former, prospective employees, and independent contractors have become routine and perpetuate illegal conduct by silencing those who are victims or who have knowledge of illegal discrimination, illegal harassment, illegal retaliation, wage and hour violations, or sexual assault. It is the intent of the legislature to prohibit nondisclosure and nondisparagement provisions in agreements, which defeat the strong public policy in favor of disclosure." [2022 c 133 s 1.]