

1 **EMPLOYMENT CONFIDENTIALITY AMENDMENTS**

2 2024 GENERAL SESSION

3 STATE OF UTAH

4

5 **LONG TITLE**

6 **General Description:**

7 This bill enacts provisions related to sexual assault and sexual harassment in the
8 workplace.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ makes void and unenforceable nondisclosure and non-disparagement clauses
12 (confidentiality clauses) that prevent an employee from:
 - 13 • discussing or disclosing sexual assault, sexual harassment, or the existence of a
14 settlement agreement resolving a sexual assault dispute or sexual harassment
15 dispute; or
 - 16 • making a negative statement about the employer related to a claim or sexual
17 assault or sexual harassment;
- 18 ▶ provides that a person who attempts to enforce a prohibited confidentiality clause:
 - 19 • is liable for costs and reasonable attorney fees; and
 - 20 • is not entitled to monetary damages for a breach of a confidentiality clause;
- 21 ▶ prohibits retaliation against an employee who does not enter into an employment
22 contract that contains a prohibited confidentiality clause;
- 23 ▶ defines terms; and
- 24 ▶ makes technical and conforming changes.

25 **Money Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 ENACTS:

31 **34A-5-114**, Utah Code Annotated 1953

33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section **34A-5-114** is enacted to read:

35 **34A-5-114. Limitations on enforceability of nondisclosure and non-disparagement**
36 **clauses -- Retaliation prohibited.**

37 (1) As used in this section:

38 (a) "Confidentiality clause" means a nondisclosure clause or a non-disparagement
39 clause.

40 (b) "Employee" includes a former employee.

41 (c) "Nondisclosure clause" means an agreement between an employee and employer
42 that:

43 (i) prevents, or has the effect of preventing, an employee from disclosing or discussing:

44 (A) sexual assault;

45 (B) sexual harassment; or

46 (C) the existence of a settlement agreement; and

47 (ii) is for the purpose, or has the effect, of concealing details related to a claim an
48 employee reasonably believes is an allegation of sexual assault or sexual harassment.

49 (d) "Non-disparagement clause" means an agreement between an employee and
50 employer that prohibits, or has the effect of prohibiting, an employee from making a negative
51 statement that is:

52 (i) about the employer; and

53 (ii) related to:

54 (A) a claim of sexual assault or sexual harassment;

55 (B) a sexual assault dispute; or

56 (C) a sexual harassment dispute.

57 (e) "Post-employment restrictive covenant" means the same as that term is defined in
58 Section 34-51-102.

59 (f) "Proprietary information" means an employer's business plan or customer
60 information.

61 (g) "Retaliate" means taking an adverse action against an employee, including:

62 (i) failure to hire;

63 (ii) discharge;

- 64 (iii) suspension;
- 65 (iv) demotion;
- 66 (v) discrimination in the terms, conditions, or privileges of employment.
- 67 (h) "Settlement agreement" means an agreement resolving a sexual assault dispute or
- 68 sexual harassment dispute.
- 69 (i) "Sexual assault" means:
- 70 (i) conduct that would constitute a violation of 18 U.S.C. Secs. 2241 through 2244; or
- 71 (ii) any criminal conduct described in Title 76, Chapter 5, Part 4, Sexual Offenses.
- 72 (j) "Sexual assault dispute" means a dispute between an employer and the employer's
- 73 employee relating to alleged sexual assault.
- 74 (k) "Sexual harassment" means conduct that is a violation of:
- 75 (i) Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e et seq.; or
- 76 (ii) Subsection 34A-5-106(1)(a)(i) prohibiting harassment on the basis of sex, sexual
- 77 orientation, or gender.
- 78 (l) "Sexual harassment dispute" means a dispute between an employer and the
- 79 employer's employee relating to alleged sexual harassment.
- 80 (2) (a) A confidentiality clause, including in an employment contract, is against public
- 81 policy and is void and unenforceable.
- 82 (b) Subsection (2)(a) applies regardless of whether the parties agree to the
- 83 confidentiality clause before or after a sexual assault dispute or sexual harassment dispute
- 84 arises.
- 85 (c) An employer may not retaliate against an employee because the employee does not
- 86 enter into a confidentiality clause or an employment contract that contains a confidentiality
- 87 clause.
- 88 (3) An employer who attempts to enforce a confidentiality clause is:
- 89 (a) liable for all costs, including reasonable attorney fees, resulting from any legal
- 90 action to enforce the confidentiality clause; and
- 91 (b) not entitled to monetary damages resulting from a breach of a confidentiality
- 92 clause.
- 93 (4) Nothing in this section:
- 94 (a) prevents an agreement between an employee who alleges sexual assault or sexual

- 95 harassment and an employer from containing a clause prohibiting disclosure of:
- 96 (i) the amount of a monetary settlement; or
- 97 (ii) at the request of the employee, facts that could reasonably lead to the identification
- 98 of the employee;
- 99 (b) prevents an employer from requiring an employee to:
- 100 (i) sign a post-employment restrictive covenant; or
- 101 (ii) agree not to disclose an employer's non-public trade secrets, proprietary
- 102 information, or confidential information that does not involve illegal acts;
- 103 (c) authorizes an employee to:
- 104 (i) disclose data otherwise protected by law or legal privilege; or
- 105 (ii) knowingly make statements or disclosures that are false or made with reckless
- 106 disregard of the truth;
- 107 (d) permits a disclosure that would violate state or federal law; or
- 108 (e) limits other grounds that may exist at law or in equity for the unenforceability of a
- 109 confidentiality clause.
- 110 Section 2. **Effective date.**
- 111 This bill takes effect on May 1, 2024.