

Representative Matt MacPherson proposes the following substitute bill:

EMPLOYMENT CONFIDENTIALITY AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kera Birkeland

Senate Sponsor: Todd D. Weiler

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- defines terms;
- makes nondisclosure and non-disparagement clauses (confidentiality clauses), related to sexual assault and sexual harassment, as a condition of employment, unenforceable; and
- provides that a person who attempts to enforce a confidentiality clause described in the preceding paragraph may be liable for costs and attorney fees under certain conditions.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:

ENACTS:



26 [34A-5-114](#), Utah Code Annotated 1953

27

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

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

30 **34A-5-114. Limitations on enforceability of nondisclosure and non-disparagement**
31 **clauses -- Retaliation prohibited.**

32 (1) As used in this section:

33 (a) "Confidentiality clause" means a nondisclosure clause or a non-disparagement
34 clause.

35 (b) "Employee" means a current or a former employee.

36 (c) "Nondisclosure clause" means an agreement between an employee and employer
37 that:

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

39 (A) sexual assault;

40 (B) allegations of sexual assault;

41 (C) sexual harassment; or

42 (D) allegations of sexual harassment.

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

46 (i) about the employer; and

47 (ii) related to:

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

49 (B) a sexual assault dispute; or

50 (C) a sexual harassment dispute.

51 (e) "Post-employment restrictive covenant" means the same as that term is defined in
52 Section [34-51-102](#).

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

55 (g) "Retaliate" means taking an adverse action against an employee ~~§~~→ **because the**
55a **employee made an allegation of sexual harassment or assault** ~~←§~~ , including:

56 (i) discharge;

(ii) suspension;

(iii) demotion; or

(iv) discrimination in the terms, conditions, or privileges of employment.

(h) "Sexual assault" means:

(i) conduct that would constitute a violation of 18 U.S.C. Secs. 2241 through 2244; or

(ii) criminal conduct described in Title 76, Chapter 5, Part 4, Sexual Offenses.

(i) "Sexual assault dispute" means a dispute between an employer and the employer's employee relating to alleged sexual assault.

(j) "Sexual harassment" means conduct that is a violation of:

(i) Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e et seq.; or

(ii) Subsection 34A-5-106(1)(a)(i) prohibiting harassment on the basis of sex, sexual orientation, or gender.

(k) "Sexual harassment dispute" means a dispute between an employer and the employer's employee relating to alleged sexual harassment.

(2) (a) A confidentiality clause regarding sexual misconduct, as a condition of employment, is against public policy and is void and unenforceable.

(b) After an employee makes an allegation of sexual harassment or sexual assault, an employer of any sized-business, regardless of Subsection ~~Ŝ→ [34-A-102]~~ 34A-5-102 ←Ŝ (1)(i)(D) ~~Ŝ→ [~~

may not retaliate:

~~—— (i) against an employee until a settlement agreement is reached;]~~

(i) may not retaliate against the employee because the employee made an allegation of sexual harassment or assault; or ←Ŝ

~~Ŝ→ [(ii) after a settlement agreement is reached, but may discipline or terminate an employee in accordance with written company policy, and based on documentation detailing an employee's violation of company policy or poor performance; or~~

~~—— (iii)] (ii) may not retaliate ←Ŝ based on an employee's refusal to enter into a confidentiality clause or an~~

employment contract that, as a condition of employment, contains a confidentiality clause.

~~Ŝ→ (c) An employee may, within three business days after the day on which the employee agrees to a settlement agreement that includes a ~~Ŝ→ [confidentiality]~~ confidentiality ←Ŝ clause regarding sexual~~

misconduct, withdraw from the settlement agreement. ←Ŝ

(3) An employer who attempts to enforce a confidentiality clause in violation of this section:

(a) is liable for all costs, including reasonable attorney fees, resulting from legal action to enforce the confidentiality clause; and

85 (b) is not entitled to monetary damages resulting from a breach of a confidentiality
86 clause.
87 (4) This section does not:

(a) prohibit an agreement between an employee who alleges sexual assault or sexual harassment and an employer from containing a nondisclosure clause, a non-disparagement clause, or any other clause prohibiting disclosure of:

(i) the amount of a monetary settlement; or

(ii) at the request of the employee, facts that could reasonably lead to the identification of the employee;

(b) prohibit an employer from requiring an employee to:

(i) sign a post-employment restrictive covenant; or

(ii) agree not to disclose an employer's non-public trade secrets, proprietary information, or confidential information that does not involve illegal acts;

(c) authorize an employee to:

(i) disclose data otherwise protected by law or legal privilege; or

(ii) knowingly make statements or disclosures that are false or made with reckless disregard of the truth;

(d) prohibit an employee from discussing sexual misconduct or allegations of sexual misconduct in a civil or criminal case when subpoenaed if the sexual misconduct or allegations of sexual misconduct are against the individual whom the employee alleged engaged in sexual misconduct;

(e) permit a disclosure that would violate state or federal law; or

(f) limit other grounds that may exist at law or in equity for the unenforceability of a confidentiality clause.

Section 2. Effective date.

§→ ~~[This bill takes effect on May 1, 2024.]~~ If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override. ←§

Section 3. Retrospective operation.

This bill provides retrospective operation to January 1, 2023.