

EMPLOYMENT CONFIDENTIALITY AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kera Birkeland

Senate Sponsor: Todd D. Weiler

LONG TITLE**Committee Note:**

The Judiciary Interim Committee recommended this bill.

Legislative Vote: 14 voting for 1 voting against 2 absent

General Description:

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

Highlighted Provisions:

This bill:

- ▶ makes void and unenforceable nondisclosure and non-disparagement clauses (confidentiality clauses) that prevent an employee from:
 - discussing or disclosing sexual assault, sexual harassment, or the existence of a settlement agreement resolving a sexual assault dispute or sexual harassment dispute; or
 - making a negative statement about the employer related to a claim of sexual assault or sexual harassment;
- ▶ provides that a person who attempts to enforce a prohibited confidentiality clause:
 - is liable for costs and reasonable attorney fees; and
 - is not entitled to monetary damages for a breach of a confidentiality clause;
- ▶ prohibits retaliation against an employee who does not enter into an employment contract that contains a prohibited confidentiality clause;



- defines terms; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

34A-5-114, Utah Code Annotated 1953

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

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

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

(1) As used in this section:

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

(b) "Employee" includes a former employee.

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

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

(A) sexual assault;

(B) sexual harassment; or

(C) the existence of a settlement agreement; and

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

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

(i) about the employer; and

(ii) related to:

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

60 (B) a sexual assault dispute; or

61 (C) a sexual harassment dispute.

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

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

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

67 (i) failure to hire;

68 (ii) discharge;

69 (iii) suspension;

70 (iv) demotion; or

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

72 (h) "Settlement agreement" means an agreement resolving a sexual assault dispute or
73 sexual harassment dispute.

74 (i) "Sexual assault" means:

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

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

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

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

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

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

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

85 (2) (a) A confidentiality clause, including in an employment contract, is against public
86 policy and is void and unenforceable.

87 (b) Subsection (2)(a) applies regardless of whether the parties agree to the
88 confidentiality clause before or after a sexual assault dispute or sexual harassment dispute
89 arises.

90 (c) An employer may not retaliate against an employee because the employee does not
91 enter into a confidentiality clause or an employment contract that contains a confidentiality
92 clause.

93 (3) An employer who attempts to enforce a confidentiality clause is:

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

96 (b) not entitled to monetary damages resulting from a breach of a confidentiality
97 clause.

98 (4) Nothing in this section:

99 (a) prevents an agreement between an employee who alleges sexual assault or sexual
100 harassment and an employer from containing a clause prohibiting disclosure of:

101 (i) the amount of a monetary settlement; or

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

104 (b) prevents an employer from requiring an employee to:

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

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

108 (c) authorizes an employee to:

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

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

112 (d) permits a disclosure that would violate state or federal law; or

113 (e) limits other grounds that may exist at law or in equity for the unenforceability of a
114 confidentiality clause.

115 **Section 2. Effective date.**

116 This bill takes effect on May 1, 2024.