

**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

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ makes voidable 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 voided 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 non-voidable confidentiality clause as part of a settlement agreement;



- 26           ▶ defines terms; and
- 27           ▶ makes technical and conforming changes.

28 **Money Appropriated in this Bill:**

29           None

30 **Other Special Clauses:**

31           None

32 **Utah Code Sections Affected:**

33 ENACTS:

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



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

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

38           **34A-5-114. Limitations on enforceability of nondisclosure and non-disparagement**  
39 **clauses -- Retaliation prohibited.**

40           (1) As used in this section:

41           (a) "Confidentiality clause" means a nondisclosure clause and a non-disparagement  
42 clause.

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

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

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

47           (A) sexual assault;

48           (B) allegations of sexual assault;

49           (C) sexual harassment;

50           (D) allegations of sexual harassment; or

51           (E) the existence of a settlement agreement; and

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

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

- 57 (i) about the employer; and
- 58 (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 regarding sexual misconduct in an employment
- 86 contract, or as a condition of employment, is against public policy and is void and
- 87 unenforceable.

88 (b) An employer may enter into a settlement agreement with mutual non-disclosure and  
89 non-disparagement clauses in instances of actual or alleged sexual misconduct, if the  
90 settlement agreement is voidable by the claimant.

91 (c) A claimant may void a settlement agreement, including a confidentiality clause in  
92 the settlement agreement.

93 (d) Subsection (2)(a) applies regardless of whether the parties agree to the  
94 confidentiality clause before or after a sexual assault dispute or sexual harassment dispute  
95 arises.

96 (e) An employer may not retaliate against an employee because the employee does not  
97 enter into a confidentiality clause or an employment contract that contains a confidentiality  
98 clause.

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

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

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

104 (4) Nothing in this section:

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

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

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

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

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

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

114 (c) authorizes an employee to:

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

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

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

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

121            Section 2. **Effective date.**

122            This bill takes effect on May 1, 2024.