

One Minute Memo[®]



New Jersey Says No to Pre-Dispute Arbitration Agreements and Non-Disclosure Provisions

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Seyfarth Synopsis: Governor Murphy signed Senate Bill 121 into law today, Monday, March 18, 2019. The law affects claims of discrimination, harassment, and retaliation and renders prospective waivers of rights against public policy and unenforceable, including mandatory pre-dispute arbitration agreements and waivers of rights and remedies under the New Jersey Law Against Discrimination. Additionally, the law renders non-disclosure agreements unenforceable against employees. The law as it applies to arbitration provisions is likely to face Federal Arbitration Act preemption challenges.

Earlier this year, the New Jersey Legislature passed [Senate Bill 121](#), which will prohibit employers from enforcing, among other things, mandatory pre-dispute arbitration provisions and non-disclosure agreements entered into in connection with all claims of discrimination, retaliation, and harassment. Governor Murphy [signed](#) the bill into law today.

Our previous [Management Alert](#) outlined the key components of the law and explained that the law may face a [preemption challenge](#) insofar as it prohibits mandatory pre-dispute arbitration agreements, as the Federal Arbitration Act generally favors enforcement of arbitration agreements.

Notably, this law will apply to all contracts and agreements entered into, renewed, modified, or amended **on or after the effective date**. As such, existing arbitration agreements concerning discrimination, harassment or retaliation claims remain lawful, and settlement agreements with non-disclosure provisions which were signed prior to the effective date may still be enforced.

The New Jersey law is unlike any other law in the country. Thus, employers are encouraged to contact local employment counsel and consider revising standard employment and settlement agreements.

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