

SENATE, No. 3581

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED DECEMBER 4, 2017

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

SYNOPSIS

Bars provisions in employment contracts that waive rights or remedies; bars agreements that conceal details relating to discrimination claims.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning discrimination and supplementing Title 10 of
2 the Revised Statutes.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. a. A provision in any employment contract that waives any
8 substantive or procedural right or remedy relating to a claim of
9 discrimination, retaliation, or harassment shall be deemed against
10 public policy and unenforceable.

11 b. No right or remedy under the “Law Against Discrimination,”
12 P.L.1945, c.169 (C.10:5-1 et seq.) or any other statute or case law
13 shall be prospectively waived.

14 c. This section shall not apply to the terms of any collective
15 bargaining agreement between an employer and the collective
16 bargaining representative of the employees.

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18 2. A provision in any employment contract or agreement which
19 has the purpose or effect of concealing the details relating to a
20 claim of discrimination, retaliation, or harassment shall be deemed
21 against public policy and unenforceable.

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23 3. A person who enforces or attempts to enforce a provision
24 deemed against public policy and unenforceable pursuant to P.L. ,
25 c. (C.) (pending before the Legislature as this bill) shall be
26 liable for the employee’s reasonable attorney fees and costs.

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28 4. No person shall take any retaliatory action, including but not
29 limited to failure to hire, discharge, suspension, demotion,
30 discrimination in the terms, conditions, or privileges of
31 employment, or other adverse action, against a person, on grounds
32 that the person does not enter into an agreement or contract that
33 contains a provision deemed against public policy and
34 unenforceable pursuant to P.L. , c. (C.) (pending before the
35 Legislature as this bill).

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37 5. Any person claiming to be aggrieved by a violation of P.L. ,
38 c. (C.) (pending before the Legislature as this bill) may
39 initiate suit in Superior Court. An action pursuant to this section
40 shall be commenced within two years next after the cause of any
41 such action shall have accrued. All remedies available in common
42 law tort actions shall be available to prevailing plaintiffs. These
43 remedies are in addition to any provided by P.L. , c. (C.)
44 (pending before the Legislature as this bill) or any other statute. A
45 prevailing plaintiff shall be awarded reasonable attorney fees and
46 costs.

1 6. This act shall take effect immediately and shall apply to all
2 contracts and agreements entered into, renewed, modified, or
3 amended on or after the effective date.

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STATEMENT

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8 This bill would bars provisions in employment contracts that
9 waive certain rights or remedies. It would also bar certain
10 agreements that conceal details relating to discrimination claims.

11 Under the bill, a provision in any employment contract that
12 waives any substantive or procedural right or remedy relating to a
13 claim of discrimination, retaliation, or harassment would be deemed
14 against public policy and unenforceable.

15 The bill provides that no right or remedy under the “Law Against
16 Discrimination,” P.L.1945, c.169 (C.10:5-1 et seq.) or any other
17 statute or case law could be prospectively waived.

18 The above provisions of the bill would not apply to the terms of
19 any collective bargaining agreement between an employer and the
20 collective bargaining representative of the employees.

21 The bill also provides that a provision in any employment
22 contract or agreement which has the purpose or effect of concealing
23 the details relating to a claim of discrimination, retaliation, or
24 harassment, including claims that are submitted to arbitration,
25 would be deemed against public policy and unenforceable.

26 Under the bill, a person who enforces or attempts to enforce a
27 provision deemed against public policy and unenforceable would
28 be liable for the employee’s reasonable attorney fees and costs.

29 The bill provides that no person shall take any retaliatory action,
30 including but not limited to failure to hire, discharge, suspension,
31 demotion, discrimination in the terms, conditions, or privileges of
32 employment, or other adverse action, against a person, on grounds
33 that the person does not enter into an agreement or contract that
34 contains a provision deemed against public policy and
35 unenforceable pursuant to the bill.

36 Under the bill, any person claiming to be aggrieved by a
37 violation of the bill may initiate suit in Superior Court. An action
38 would be required to be commenced within two years next after the
39 cause of any such action shall have accrued. All remedies available
40 in common law tort actions would be be available to prevailing
41 plaintiffs, in addition to the remedies provided by the bill. A
42 prevailing plaintiff would be awarded reasonable attorney fees and
43 costs.

44 The bill would take effect immediately and apply to all contracts
45 and agreements entered into, renewed, modified, or amended on or
46 after the effective date.