

MAINE STATE LEGISLATURE

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7/10/19
R OES

L.D. 1529

Date: 6/3/19

Majority

(Filing No. H- 448)

LABOR AND HOUSING

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1112, L.D. 1529, Bill, "An Act Concerning Nondisclosure Agreements in Employment"

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 26 MRSA §594-A is enacted to read:

§594-A. Nondisclosure agreements

1. Certain preemployment and employment agreements prohibited. An employer may not require an employee, intern, applicant for employment or applicant for internship to enter into a contract with the employer that contains a nondisclosure agreement, nondisparagement agreement, waiver or other provision that prevents the employee, intern or applicant from disclosing or discussing discrimination, including harassment, occurring in the workplace or at work-related events coordinated by or through the employer.

2. Certain settlement, separation and severance agreements prohibited. An employer may not require an employee, intern, applicant for employment or applicant for internship to enter into a settlement, separation or severance agreement that includes a provision that prevents the disclosure of factual information relating to a claim of discrimination, including harassment, unless the employee, intern or applicant requests such a provision.

A. A nondisclosure provision in a settlement, separation or severance agreement may not explicitly or implicitly:

(1) Limit an individual's ability to provide testimony or evidence or make reports to any federal or state agency that enforces employment or discrimination laws, including, but not limited to, the Maine Human Rights Commission and the Department of Labor; or

(2) Prevent an individual from providing testimony or evidence in a federal or state court proceeding.

COMMITTEE AMENDMENT

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B. An employer shall include in a settlement, separation or severance agreement containing a nondisclosure provision additional language that clearly states the individual retains the right:

(1) To provide testimony or evidence, or make reports to any federal or state agency that enforces employment or discrimination laws, including, but not limited to, the Maine Human Rights Commission and the Department of Labor; and

(2) To provide testimony or evidence in a federal or state court proceeding.

C. An employer shall give the individual 21 days to consider a settlement, separation or severance agreement containing a nondisclosure provision and at least 7 days following the execution of the agreement to revoke the agreement. The agreement is not effective or enforceable until the revocation period has expired.

D. An employer shall retain a copy of any settlement, separation or severance agreement that prevents the disclosure of factual information relating to a claim of discrimination, including harassment, in the individual's personnel file for 6 years following the execution of the agreement or the end of employment, whichever is later. Records required to be kept by this paragraph must be accessible to any representative of the Department of Labor at any reasonable hour.

3. Retaliation and interference prohibited. An employer may not:

A. Refuse to hire, discharge, threaten or otherwise discriminate against any individual based solely on that individual's objection to any act or practice by that employer in violation of this section; or

B. Coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of the rights granted or protected by this section.

4. Enforcement. The Department of Labor shall enforce this section.

5. Penalties. An employer that violates this section:

A. May be assessed a fine of up to \$1,000 for each violation of this section, which must be paid to the Treasurer of State; and

B. Shall pay liquidated damages to the individual in an amount equal to 3 times the amount of the total assessed fines, except that for an employer's discharge of or refusal to hire an individual in violation of subsection 3, the individual may elect:

(1) To receive liquidated damages pursuant to this paragraph; or

(2) Employment or reinstatement with back wages.'

SUMMARY

This amendment replaces the bill. It prohibits an employer from requiring an employee, intern, applicant for employment or applicant for internship to enter into a contract with the employer that contains a nondisclosure agreement, nondisparagement agreement, waiver or other provision that prevents the employee, intern or applicant from

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COMMITTEE AMENDMENT "A" to H.P. 1112, L.D. 1529

1 disclosing or discussing discrimination, including harassment, occurring in the workplace
2 or at work-related events coordinated by or through the employer.

3 It also prevents an employer from requiring an employee, intern, applicant for
4 employment or applicant for internship to enter into a settlement, separation or severance
5 agreement that includes a provision that prevents the disclosure of factual information
6 relating to a claim of discrimination, including harassment, unless the employee, intern or
7 applicant requests such a provision. Agreements may not explicitly or implicitly limit an
8 individual's ability to provide testimony or evidence or make reports to any federal or
9 state agency that enforces employment or discrimination laws, including, but not limited
10 to, the Maine Human Rights Commission and the Department of Labor, and any
11 agreement must make it clear that an individual retains the right to provide testimony or
12 evidence or make reports to any federal or state agency that enforces employment or
13 discrimination laws, including, but not limited to, the Maine Human Rights Commission
14 and the Department of Labor.

15 It specifies that an individual must be given 21 days to consider any agreement
16 containing nondisclosure provisions and be provided at least 7 days following the
17 execution of the agreement to revoke the agreement. The bill states that an agreement is
18 not effective or enforceable until the revocation period has expired.

19 It requires that an employer retain a copy of any settlement, separation or severance
20 agreement that prevents the disclosure of factual information relating to a claim of
21 discrimination, including harassment, in the individual's personnel file for 6 years.

22 It prohibits an employer from retaliating against an individual who opposes any act or
23 practice that is unlawful under these provisions or interfering with an individual in the
24 exercise or enjoyment of the rights granted or protected by these provisions. It provides
25 the Department of Labor with the duty to enforce these provisions.

FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT



129th MAINE LEGISLATURE

LD 1529

LR 676(02)

An Act Concerning Nondisclosure Agreements in Employment

Fiscal Note for Bill as Amended by Committee Amendment *A (H-448)*

Committee: Labor and Housing

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund
Minor revenue increase - Other Special Revenue Funds

Correctional and Judicial Impact Statements

This bill may increase the number of civil suits filed in the court system.

The additional workload associated with the minimal number of new cases filed in the court system does not require additional funding at this time.

The collection of additional filing fees and fine revenue may increase General Fund and other dedicated revenue by minor amounts.

Fiscal Detail and Notes

Additional costs to the Department of Labor to implement the requirements of this legislation can be absorbed within existing budgeted resources.