

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)



130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

Legislative Document

No. 965

H.P. 711

House of Representatives, March 9, 2021

An Act Concerning Nondisclosure Agreements in Employment

Reference to the Committee on Labor and Housing suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative HARNETT of Gardiner.
Cosponsored by Senator MIRAMANT of Knox and
Representatives: EVANGELOS of Friendship, MORALES of South Portland, PEBWORTH of
Blue Hill, Senator: CARNEY of Cumberland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 26 MRSA §599-C** is enacted to read:

3 **§599-C. Nondisclosure agreements**

4 **1. Employer defined.** As used in this section, unless the context otherwise indicates,
5 "employer" means a person in this State that employs individuals and includes the State
6 and political subdivisions of the State. "Employer" includes a person acting in the interest
7 of an employer directly or indirectly.

8 **2. Certain preemployment and employment agreements prohibited.** An employer
9 may not require an employee, intern or applicant for employment to enter into a contract
10 or agreement that waives or limits any right to report or discuss discrimination, retaliation
11 or harassment occurring in the workplace or at work-related events.

12 **3. Certain settlement, separation and severance agreements prohibited.** An
13 employer may not require an employee, intern or applicant for employment to enter into a
14 settlement, separation or severance agreement that includes a provision that:

15 A. Limits an individual's right to report, testify or provide evidence to a federal or state
16 agency that enforces employment or discrimination laws;

17 B. Prevents an individual from testifying or providing evidence in federal and state
18 court proceedings in response to legal process; or

19 C. Prohibits an individual from reporting conduct to a law enforcement agency.

20 **4. Mutuality of nondisclosure agreements.** A settlement, separation or severance
21 agreement may include a provision that prevents the subsequent disclosure of factual
22 information relating to a claim of discrimination, retaliation or harassment, but only if:

23 A. The employee, intern or applicant for employment initiates a request for such a
24 provision;

25 B. The provision applies to all parties to the agreement to the extent otherwise
26 permitted by law;

27 C. The agreement clearly states that the individual retains the right to report, testify or
28 provide evidence to federal and state agencies that enforce employment or
29 discrimination laws and to testify and provide evidence in federal and state court
30 proceedings; and

31 D. The employer retains a copy of the agreement for 6 years following the execution
32 of the agreement or the end of employment, whichever is later. Records required to be
33 kept by this paragraph must be accessible to any representative of the Department of
34 Labor at any reasonable hour.

35 **5. Enforcement.** The Department of Labor shall enforce this section.

36 **6. Penalties.** An employer that violates this section:

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

39 B. Shall pay liquidated damages to the individual in an amount equal to 3 times the
40 amount of the total assessed fines, except that for an employer's discharge of or refusal

1 to hire an individual who declines to enter into a contract or agreement that waives or
2 limits any right to report or discuss discrimination, retaliation or harassment occurring
3 in the workplace or at work-related events, the individual may elect:

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

5 (2) Employment or reinstatement with back wages.

6 SUMMARY

7 This bill prohibits an employer from requiring an employee, intern or applicant for
8 employment to enter into a contract or agreement that waives or limits any right to report
9 or discuss discrimination, retaliation or harassment occurring in the workplace or at work-
10 related events.

11 It also prohibits an employer from requiring an employee, intern or applicant for
12 employment to enter into a settlement, separation or severance agreement that limits an
13 individual's right to report, testify or provide evidence to a federal or state agency that
14 enforces employment or discrimination laws, prevents an individual from testifying or
15 providing evidence in federal and state court proceedings in response to legal process or
16 prohibits an individual from reporting conduct to a law enforcement agency. This bill
17 allows a settlement, separation or severance agreement, under certain circumstances, to
18 include a provision that prevents the subsequent disclosure of factual information relating
19 to a claim of discrimination, retaliation or harassment.

20 It provides the Department of Labor with the duty to enforce these provisions and
21 allows an individual to receive liquidated damages or to be employed or reinstated with
22 back wages when an employer discharges or refuses to hire an individual who declines to
23 enter into a contract or agreement that waives or limits any right to report or discuss
24 discrimination, retaliation or harassment occurring in the workplace or at work-related
25 events.