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## New Jersey Supreme Court Invalidates Non-Disparagement Clauses in Discrimination Settlements

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The New Jersey Supreme Court has ruled that non-disparagement provisions in settlement agreements are unenforceable if they have the purpose or effect of preventing parties from revealing details relating to claims of discrimination, retaliation, or harassment.

The facts before the court relate that Christine Savage had filed suit against the Township of Neptune Police Department, alleging discrimination, retaliation, and sexual harassment. The matter was resolved when the parties entered into a settlement agreement, which contained a non-disparagement provision that prevented both sides from “mak[ing] any statements ... regarding the past behavior of the parties, which ... would tend to disparage or impugn the reputation of any party.” Following the settlement, Savage went public in speaking with a television reporter, prompting the Township to file a motion to enforce the settlement agreement.

The question before the New Jersey Supreme Court was whether a non-disparagement provision in a settlement agreement can stop parties from revealing details relating to claims of discrimination, retaliation, and harassment, which is protected speech under the New Jersey Law Against Discrimination.

The unanimous decision from New Jersey’s highest court clarifies the 2019 law that removed an employer’s ability to demand a gag order of victims of discrimination in settlement agreements. That law states, “[a] provision in any employment contract or settlement agreement which has the purpose or effect of concealing the details relating to a claim of discrimination, retaliation, or harassment...shall be deemed against public policy...” N.J.S.A. 10:5-12.8(a).

The Court found that the non-disparagement clause the parties had agreed to, conflicted with the New Jersey Law Against Discrimination as it had the effect to bar speech that the law protects – speech that includes “details relating to a claim of discrimination, retaliation, or harassment.” *Id.* In the future, non-disparagement provisions should be examined in the same manner as non-disclosure provisions – if they prevent a party from discussing the specifics of a discrimination, retaliation, or harassment claim, then such a provision goes against public policy and cannot be enforced.

**TAKEAWAY:** Employers and employees resolving claims of discrimination, retaliation and/or harassment cannot agree to restrict an employee’s right to speak out about their underlying claims. To be clear, non-disparagement provisions can be enforceable, provided they do not have the purpose or effect of restricting an employee’s ability to disclose the details of claims of discrimination, retaliation, or harassment.

If you have questions about the terms of your settlement agreement, a non-disparagement provision, a non-disclosure provision, or your rights, contact [Meghan Chrisner-Keefe](#) or any member of the [Wilentz Employment Law Team](#).

### Attorney

- Meghan Chrisner-Keefe

### Practice

- Employment Law