

Confidentiality Provisions Prohibited in Sexual Harassment & Sex Discrimination Cases

By: Derek Haynes (dhaynes@porterscott.com)
Dylan de Wit (ddewit@porterscott.com)

California has enacted several statutes responding to the #MeToo movement over the last several years. One such statute that is particularly important for employers is California Civil Code (“C.C.P.”) § 1001. This article explains that new law and the practical impact on employers.

General Rule

California is a hot-bed for employment litigation. Countless cases are filed every month. However, very few of those cases ever go to trial. They resolve in a variety of ways, including through negotiated settlement agreements between employers and the accusing employees.

It is standard practice to include confidentiality provisions in settlement agreements. Confidentiality provisions prohibit parties from publicizing or discussing their allegations after a case settles. The importance of those provisions is obvious. Employers do not want to issue settlement payments only to have the accusing employees turn around and disparage them in public. That is particularly true because employers often settle cases to avoid the significant costs and inconvenience of prolonged litigation, not because there is truth to the employees’ allegations.

The new statute, C.C.P. § 1001, now changes that landscape. It prohibits confidentiality provisions in a variety of cases, including those involving allegations of sexual harassment and sex discrimination. Employers can still settle sexual harassment and sex discrimination cases, but no longer can the settlement agreements prohibit the accuser from publicizing their allegations.

Limitations

There is one notable limitations on C.C.P § 1001. It only prohibits confidentiality provisions in settlement agreements if the accuser has filed an official legal action, like a formal lawsuit or an administrative complaint filed with an appropriate government agency. Confidentiality is still permitted if a settlement is reached before an official legal action is filed.

Takeaway

C.C.P. § 1001 significantly alters what was formerly standard practice for employers settling sexual harassment and sex discrimination cases. Confidentiality provisions were major motivating reasons to settle those cases. Employers wanted to avoid having employees and former employees publicizes accusations of sexual harassment and sex discrimination. Unfortunately, once a formal legal action is filed, employers can no longer prevent those disclosures.

As stated above, C.C.P. § 1001 only prohibits confidentiality provisions after the accusing employee files a formal legal action. Confidentiality is still possible if a settlement is reached before the legal action is filed. Thus, it is imperative that employers take all complaints of harassment and discrimination seriously. Those complaints should be investigated promptly and resolved appropriately