

Rising Class Actions in Washington State Over Employee Handbooks

by Michael Droke and Aaron Goldstein

Employers beware! Plaintiff's firms are bringing class actions suits under Washington's Silenced No More Act ("SNMA") alleging that confidentiality provisions in employee handbooks and agreements violate this law.

History of Washington's Silenced No More Act

Since June 9, 2022, the SNMA has significantly restricted employers' ability to include nondisclosure and nondisparagement provisions in employment agreements, independent contractor agreements, settlement agreements, or other contracts. Under the Act, employers are prohibited from preventing employees from discussing or disclosing workplace conduct that they reasonably believe to be unlawful under Washington law. Examples include illegal discrimination, harassment, retaliation, wage and hour violations, or sexual assault. However, the Act still allows employers to enter into agreements that maintain the confidentiality of settlement amounts and protects trade secrets, proprietary information, or other confidential information that does not relate to illegal conduct. The law defines "employee" as a current, former, or prospective employee, or independent contractor.

Employers that violate this Act can be liable in a civil action for actual damages or statutory damages of \$10,000, whichever is more, plus reasonable attorneys' fees and costs.

Class Action Complaints in Washington

A class action lawsuit was recently brought against an employer (and related entities) alleging violations of the SNMA because the employer required employees to agree to its confidentiality policy set forth in the employee handbook. The plaintiffs allege that this provision violates the SNMA because the language requests employees to keep information about potentially illegal discrimination or harassment strictly confidential, during or even after their employment ended.

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This case includes claims under wage and hour laws as well, but the SNMA class focuses specifically on the employer's use of confidentiality provisions. On December 10, 2024, the court granted the order certifying the class, allowing plaintiffs to sue on behalf of all similarly affected employees, except for those who opt out.

Implications for Employers

- The SNMA expressly prohibits employers from using nondisclosure or nondisparagement provisions that prevent, or could be construed as preventing, an employee, potential or future, or independent contractor from discussing or disclosing conduct that the individual reasonably believes to be unlawful.
- Employers cannot require nor request that employees or independent contractors sign agreements or policies restricting disclosure or discussion of unlawful conduct such as harassment, discrimination, or retaliation.
- Agreements and employment policies entered into or implemented after June 9, 2022, cannot contain blanket nondisclosure or nondisparagement clauses.
- Employers found violating the SNMA face potential civil liability with statutory damages, or actual damages, and reasonable attorneys' fees.
- Although the law strengthens employee protections, non-compliance by employers increases litigation risk.

Next Steps for Employers

Employers in Washington and employers who employ individuals residing in Washington should promptly:

- Review all employee handbooks, policies, and agreements to remove or revise nondisparagement, nondisclosure, and confidentiality provisions to ensure compliance with the SNMA.
- Train HR and legal teams on the scope of the SNMA and the risks of implementing confidentiality restrictions.
- Consider obtaining legal review of all employment agreements and policies to minimize exposure to single-plaintiff and class action litigation.