

# Electronic Alert

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## Washington-Based Employees or Independent Contractors? Beware of H.B. 1795

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H.B. 1795, also known as Washington’s “Silenced No More Act” (“Act”), will take effect on June 9, 2022. As we approach the Act’s effective date, employers should review their agreements for compliance with the new law.

### *Prohibited Contract Provisions*

The Act prohibits contract provisions that forbid employees from disclosing or discussing conduct, or the existence of a settlement related to such conduct, that the employee *reasonably believed* under Washington state, federal, or common law was:

- Illegal discrimination;
- Illegal harassment;
- Illegal retaliation;
- A wage and hour violation;
- Sexual assault; or
- Conduct recognized as against a clear mandate of public policy.

This includes conduct that occurred at work, at work-related events, between employees, between an employer and an employee, and regardless of whether the conduct occurred on or off the employer’s premises. The Act further prohibits employers from discharging, discriminating, or retaliating against an employee that discussed or disclosed the type of conduct described above. The law allows enforcement of a contract provision that prohibits disclosure of the amount paid in a settlement.

### *Broad Application*

The Act applies to current, former, and prospective employees, in addition to independent contractors. The Act also applies to employment agreements, independent contractor agreements, settlement agreements, and “any other agreement between an employer and an employee.”

### *Retroactive Application*

The Act retroactively invalidates prohibited nondisclosure and nondisparagement provisions in agreements created before June 9, 2022, and which were agreed to at the outset or during the course of employment. However, the law does not apply retroactively to settlement agreements.

## *Violations*

Employers violate the Act when they request or require an employee to agree to a prohibited contract provision, and when employers attempt to enforce a prohibited contract provision, which can occur in a lawsuit, a threat to enforce the provision, or “any other attempt to influence” a person to comply with the illegal provision. A violation of the Act will cost employers actual damages or statutory damages of \$10,000, whichever is greater, in addition to the plaintiff’s attorneys’ fees and costs.

*For questions about H.B. 1795 or for any other employment-related questions, contact Alysba Phelps at 503-276-2183 or [aphelps@barran.com](mailto:aphelps@barran.com).*