

Alert | Labor & Employment



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New Jersey Supreme Court Limits Non-Disparagement Clauses in Employment Agreements

On May 7, 2024, the New Jersey Supreme Court unanimously held in *Savage v. Township of Neptune* that employers cannot enforce any non-disparagement or other provision in an agreement that has the effect of concealing details relating to claims of discrimination, retaliation, and harassment. With this decision, the court has clarified the scope of the 2019 Amendment to the New Jersey Law Against Discrimination (NJLAD).

In the wake of the #MeToo movement, New Jersey enacted an amendment to the NJLAD that removed obstacles making it difficult for employees to speak about workplace discrimination, retaliation, and harassment. Specifically, N.J.S.A. 10:5-12.8(a) provides that “[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 (hereinafter referred to as a non-disclosure provision) shall be deemed against public policy and unenforceable against a current or former employee.” The amendment did not clarify whether the term “non-disclosure provision” included non-disparagement provisions.

In 2020, the Township of Neptune sought to enforce a non-disparagement provision in a settlement agreement between it and former employee Police Officer Christine Savage, who had discussed her case and made statements about those she believed had harassed her on a television news segment. The trial court granted the township’s motion to enforce the provision, finding that the NJLAD amendment barred only non-disclosure and confidentiality agreements, and that Savage had violated an enforceable non-

disparagement provision. The appellate court similarly held that the township could enforce the non-disparagement clause.

The New Jersey Supreme Court disagreed with both lower courts and ultimately held that *any* provision, including a non-disparagement provision, that has the effect of concealing details relating to claims of discrimination, retaliation, and harassment is unenforceable. As a result, the Supreme Court ruled that the non-disparagement clause in Savage's settlement agreement was unenforceable.

Takeaways

The Supreme Court did not go as far as to ban non-disparagement clauses altogether. However, to be enforceable, non-disparagement provisions must be narrowly drafted and limited to matters unrelated to an employee's discrimination, retaliation, or harassment claims. Employers should consider reviewing their standard agreements, including settlement and separation agreements, to ensure compliance with this new ruling.

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