

U.S. Congress Approves Bill Limiting Pre-dispute Nondisclosure Agreements in Sexual Harassment and Assault Disputes

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In a bipartisan 315-109 vote, the U.S. House of Representatives has [approved a bill](#) that would render pre-dispute nondisclosure and nondisparagement clauses judicially unenforceable with respect to sexual assault or sexual harassment disputes. The bill previously passed the Senate in September of this year and now goes before President Joe Biden for consideration.

The bill, termed the “Speak Out Act,” provides:

With respect to a sexual assault dispute or sexual harassment dispute, no nondisclosure clause or nondisparagement clause agreed to before the dispute arises shall be judicially enforceable in instances in which conduct is alleged to have violated Federal, Tribal, or State law.

For purposes of the bill, a “nondisclosure clause” is defined as “a provision in a contract or agreement that requires the parties to the contract or agreement not to disclose or discuss conduct, the existence of a settlement involving conduct, or information covered by the terms and conditions of the contract or agreement.” A “nondisparagement clause” is defined as “a provision in a contract or agreement that requires 1 or more parties to the contract or agreement not to make a negative statement about another party that relates to the contract, agreement, claim, or case.”

The bill expressly limits any preemptory impact on state or local law, stating that nothing in the bill “shall prohibit a State or locality from enforcing a provision of State law governing nondisclosure or nondisparagement clauses that is at least as protective of the right of an individual to speak freely, as provided by this Act.” This language is likely driven by the numerous laws that have been enacted in a variety of localities – including [New York](#), [Oregon](#) and [Washington](#) – limiting or placing hurdles around nondisclosure and confidentiality provisions in the context of sexual harassment claims. The current bill does, however, note that it shall not prohibit an employer and an employee from “protecting trade secrets or proprietary information.”

We will continue to report on developments relating to this bill.

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- **Evandro C. Gigante**
Partner
- **Laura M. Fant**
Special Employment Law Counsel