

# Virginia Restricts Employers' Use Of Nondisclosure/Nondisparagement Agreements and SSNs

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Virginia has enacted two new laws which will further limit employers' use of nondisclosure and nondisparagement agreements with employees and prospective employees and will bar the use of social security numbers as employee identification numbers and on employee identification badges or cards. The new laws go into effect July 1, 2023.

## **Restrictions on Nondisclosure, Confidentiality, and Non-disparagement Agreements**

Governor Youngkin signed [HB 1895](#) into law on March 26, 2023. HB 1895 amends [VA. Code § 40.1-28.01](#), "Nondisclosure or confidentiality agreement; provisions regarding sexual assault; condition of employment" (the "Nondisclosure Agreement Law"). The Nondisclosure Agreement Law currently restricts employers from requiring employees or prospective employees "to execute or renew any provision in a nondisclosure or confidentiality agreement that has the purpose or effect of concealing the details relating to a claim of sexual assault." Any agreements that include such provisions are "void and unenforceable."

Once the amendments in HB 1895 take effect on July 1, 2023, the Nondisclosure Agreement Law will not only cover agreements that have "the purpose or effect of concealing the details relating to a claim of sexual assault," but also claims of sexual harassment. Further, the Nondisclosure Agreement Law will apply to not only nondisclosure and confidentiality agreements, but also agreements with a "provision relating to nondisparagement." "Sexual harassment" for purposes of the law is defined by reference to another [statute](#) that defines the term as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when such conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment."

## Employee Identification Numbers

[SB 1040](#), “Prohibited use of employee’s social security number; civil penalty,” was signed into law by Governor Youngkin on March 21, 2023. When this new law goes into effect on July 1, 2023, it will prohibit employers from using “an employee’s social security number or any derivative thereof on any identification card or badge, any access card or badge, or any other similar card or badge issued to such employee.” Employers who knowingly violate this prohibition will be subject to a civil penalty of up to \$100 per violation.

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