

CHAPTER 39

AN ACT concerning discrimination and supplementing Title 10 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.10:5-12.7 Certain waivers in employment contract deemed against public policy and unenforceable.

1. a. A provision in any employment contract that waives any substantive or procedural right or remedy relating to a claim of discrimination, retaliation, or harassment shall be deemed against public policy and unenforceable.

b. No right or remedy under the “Law Against Discrimination,” P.L.1945, c.169 (C.10:5-1 et seq.) or any other statute or case law shall be prospectively waived.

c. This section shall not apply to the terms of any collective bargaining agreement between an employer and the collective bargaining representative of the employees.

C.10:5-12.8 Certain provisions in employment contract, settlement agreement deemed against public policy and unenforceable.

2. a. 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 (hereinafter referred to as an “employee”) who is a party to the contract or settlement. If the employee publicly reveals sufficient details of the claim so that the employer is reasonably identifiable, then the non-disclosure provision shall also be unenforceable against the employer.

b. Every settlement agreement resolving a discrimination, retaliation, or harassment claim by an employee against an employer shall include a bold, prominently placed notice that although the parties may have agreed to keep the settlement and underlying facts confidential, such a provision in an agreement is unenforceable against the employer if the employee publicly reveals sufficient details of the claim so that the employer is reasonably identifiable.

c. Notwithstanding any other provision of law to the contrary, this section shall not be construed to prohibit an employer from requiring an employee to sign an agreement:

(1) in which the employee agrees not to enter into competition with the employer during or after employment; or

(2) in which the employee agrees not to disclose proprietary information, which includes only non-public trade secrets, business plan and customer information.

C.10:5-12.9 Liability for enforcing, attempting to enforce provision deemed against public policy, unenforceable.

3. A person who enforces or attempts to enforce a provision deemed against public policy and unenforceable pursuant to P.L.2019, c.39 (C.10:5-12.7 et seq.) shall be liable for the employee’s reasonable attorney fees and costs.

C.10:5-12.10 Retaliatory actions prohibited.

4. No person shall take any retaliatory action, including but not limited to failure to hire, discharge, suspension, demotion, discrimination in the terms, conditions, or privileges of employment, or other adverse action, against a person, on grounds that the person does not enter into an agreement or contract that contains a provision deemed against public policy and unenforceable pursuant to P.L.2019, c.39 (C.10:5-12.7 et seq.).

C.10:5-12.11 Grievances, actions.

5. Any person claiming to be aggrieved by a violation of P.L.2019, c.39 (C.10:5-12.7 et seq.) may initiate suit in Superior Court. An action pursuant to this section shall be commenced within two years next after the cause of any such action shall have accrued. All remedies available in common law tort actions shall be available to prevailing plaintiffs. These remedies are in addition to any provided by P.L.2019, c.39 (C.10:5-12.7 et seq.) or any other statute. A prevailing plaintiff shall be awarded reasonable attorney fees and costs.

6. This act shall take effect immediately and shall apply to all contracts and agreements entered into, renewed, modified, or amended on or after the effective date.

Approved March 18, 2019.