



# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 1529

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H.P. 1112

House of Representatives, April 9, 2019

### An Act Concerning Nondisclosure Agreements in Employment

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Reference to the Committee on Labor and Housing suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative HARNETT of Gardiner.  
Cosponsored by Senator BELLOWS of Kennebec and  
Representatives: CARDONE of Bangor, MADIGAN of Waterville, PEBWORTH of Blue Hill,  
RECKITT of South Portland, WARREN of Hallowell, Senator: CARPENTER of Aroostook.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 26 MRSA c. 7, sub-c. 3-B** is enacted to read:

3 **SUBCHAPTER 3-B**

4 **NONDISCLOSURE AGREEMENTS IN EMPLOYMENT**

5 **§691. Nondisclosure agreements**

6 **1. Certain preemployment and employment agreements prohibited.** It is an  
7 unlawful employment practice for an employer to enter into a contract or agreement with  
8 an employee or prospective employee:

9 A. As a condition of employment, continued employment, promotion, compensation  
10 or benefits; and

11 B. That contains a nondisclosure agreement, nondisparagement agreement, waiver or  
12 other provision that has the purpose or effect of preventing the employee from  
13 disclosing or discussing discrimination, including harassment, occurring between  
14 employees or between an employer and an employee:

15 (1) In the workplace;

16 (2) At work-related events coordinated by or through the employer; or

17 (3) Off the employment premises.

18 **2. Certain settlement, separation and severance agreements prohibited.** Unless  
19 entered into at the employee's, prospective employee's or former employee's request, an  
20 employer may not enter into a settlement, separation or severance agreement that includes  
21 a provision that prevents the disclosure of factual information relating to a claim of  
22 discrimination, including harassment.

23 A. A nondisclosure provision in a settlement agreement may not explicitly or  
24 implicitly:

25 (1) Limit an individual's ability to provide testimony or evidence, file claims or  
26 make reports to any federal or state agency that enforces employment or  
27 discrimination laws, including, but not limited to, the Maine Human Rights  
28 Commission and the Department of Labor; or

29 (2) Prevent an employee from providing testimony or evidence in state or federal  
30 litigation or proceedings, including class or collective actions, against the  
31 employer.

32 B. An employer shall include in a settlement agreement that includes any  
33 nondisclosure provision additional language that clearly states that an employee  
34 retains the right to provide testimony or evidence, file claims or make reports to any  
35 federal or state agency that enforces employment or discrimination laws, including,  
36 but not limited to, the Maine Human Rights Commission and the Department of  
37 Labor.

1           C. The employee, prospective employee or former employee that is a potential party  
2           to a settlement agreement must be given 21 days to consider the nondisclosure terms  
3           and conditions and given at least 7 days following the execution of the settlement  
4           agreement to revoke the agreement. The agreement is not effective or enforceable  
5           until the revocation period has expired.

6           **3. No damages.** An employee, prospective employee or former employee is not  
7           subject to monetary damages for breaching a contract or agreement prohibited in  
8           subsection 1 or described in subsection 2.

9   **SUMMARY**

10           This bill prohibits employers from requiring agreements that prevent an employee or  
11           prospective employee from disclosing or discussing discrimination, including harassment,  
12           occurring between employees or between an employer and an employee.

13           The bill prohibits settlement agreements, unless requested by the employee,  
14           prospective employee or former employee, from including a provision that prevents the  
15           disclosure of factual information relating to a claim of discrimination, including  
16           harassment. Agreements may not explicitly or implicitly limit an individual's ability to  
17           provide testimony or evidence, file claims or make reports to any federal or state agency  
18           that enforces employment or discrimination laws, including, but not limited to, the Maine  
19           Human Rights Commission and the Department of Labor.

20           An employee, prospective employee or former employee is not liable for damages for  
21           breaching a prohibited nondisclosure agreement or a settlement agreement.