



Manufacturers Association of Maine

Testimony of

Jessica L. Laliberte

On behalf of the Manufacturers Association of Maine

In Opposition of

LD 965 An Act Concerning Nondisclosure Agreements in Employment

April 30, 2021

Senator Hickman, Representative Sylvester, and members of the Joint Standing Committee on Labor and Housing. The Manufacturers Association of Maine is a non-partisan, pro-growth, pro-manufacturing trade association representing 400 Maine manufactures and their 29,000 employees. We represent aerospace, metal, paper, marine/boat building, semi-conductor, wood, textile, aquaculture, biotech, medical device, electronics, RF and wireless communications, plastics, composites and bioplastics, studio and food and beverage manufacturing.

The Manufacturers Association of Maine opposes **LD 965 An Act Concerning Nondisclosure Agreements in Employment**. We are particularly concerned with section four of this proposal.

4. Mutuality of nondisclosure agreements. A settlement, separation or severance agreement may include a provision that prevents the subsequent disclosure of factual information relating to a claim of discrimination, retaliation or harassment, but only if:

- A. The employee, intern or applicant for employment initiates a request for such a provision;
- B. The provision applies to all parties to the agreement to the extent otherwise permitted by law;
- C. The agreement clearly states that the individual retains the right to report, testify or provide evidence to federal and state agencies that enforce employment or discrimination laws and to testify and provide evidence in federal and state court proceedings; and
- D. The employer retains a copy of the agreement for 6 years following the execution of the agreement or the end of employment, whichever is later. Records required to be kept by this paragraph must be accessible to any representative of the Department of Labor at any reasonable hour.

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In most situations in which an employer is sued for harassment, retaliation, and or discrimination they do not believe that the allegations occurred and are settling the matter because the costs of defending the lawsuit are far more than the costs associated with possible settlement. When settlement discussions begin, it starts with the plaintiff making a demand and the employer responding to the financial demand and adding in non-financial terms as well (confidentiality, non-disclosure, agreement not to re-apply etc.) Accordingly, employers in most of the cases would find themselves paying a settlement out, but the employee/former employee still getting to talk about the alleged harassment, discrimination, and or retaliation publicly and privately. Accordingly, it would take any incentive off the table to settle a matter to decrease negative PR that could come from the matter, because the employee will be permitted to discuss the matter (his/her/their version at least) publicly, and the employer or company will likely be limited in what they can say based on employee confidentiality rules.

A mutual non-disclosure that applies to “all parties to the agreement” is not something an organization can appropriately control. A business cannot speak. Accordingly, all employees with authority (real or apparent) can speak on their behalf. Normally if we have a “mutual” nondisclosure statement, it provides that a certain subset of the organization will not disclose/discuss the matter—such as the individual accused, owner, people acting as representatives to the litigation, etc. It must be limited because once they leave the organization, we have no control over whether they talk or do not talk, and they themselves are not signatories to the agreement, so they do not have anything to lose by talking about the event.

For these reasons, the Manufacturers Association of Maine opposes **LD 965 An Act Concerning Nondisclosure Agreements in Employment** and would urge and ought not to pass vote by this committee.

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