



Janet T. Mills
GOVERNOR

STATE OF MAINE
DEPARTMENT OF LABOR
54 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0055

Laura A. Fortman
COMMISSIONER

To: Senator Craig Hickman, Chair
Representative Mike Sylvester, Chair
Members of the Joint Standing Committee on Labor and Housing

From: Michael Roland, Director, Bureau of Labor Standards, Maine Department of Labor

Date: Friday, April 30, 2021

Re: L.D. 965, An Act Concerning Nondisclosure Agreements in Employment

The Department would like to provide the following letter regarding L.D. 965, An Act Concerning Nondisclosure Agreements in Employment.

This bill restricts the use of nondisclosure provisions in settlement agreements under certain circumstances, and requires the Department to enforce compliance with the bill's requirements.

We understand the desire to protect workers from the potential suppression of their right to speak out about discrimination and other offenses occurring in their workplaces. However, the Department is concerned about restricting the ability of an employer and a worker to enter into agreements containing non-disclosure provisions that serve the interests of both parties. Non-disclosure provisions are not inherently contrary to public policy, and can serve legitimate purposes in particular cases. Additionally, we believe the potential availability of non-disclosure provisions can facilitate settlements in cases that might not otherwise settle, and that individual employees may not wish to pursue through litigation, which could entail making public unflattering or sensitive information on the part of the plaintiff. On balance we believe the public interest is better served by preserving the option of non-disclosure provisions rather than legislatively restricting the terms and conditions upon which parties can resolve employment disputes. For this reason, we oppose LD 965.

We also note that the enforcement responsibilities the bill assigns to the Department would likely result in staff receiving numerous inquiries from both employers and employees about the validity of particular agreements. Additional staff may be required in order to respond to these inquiries.

Thank you very much for the consideration of my letter. I will be happy to join you for the work session on this bill and answer any questions you may have.

The Maine Department of Labor is committed to serving Maine workers and businesses by helping employers recruit and train a talented workforce, providing workers with skills needed to compete in our economy, assisting individuals when jobs are lost, aiding people with disabilities reach career goals, ensuring safe and fair workplaces for people on the job and providing research and analysis of employment data to support job growth.