New Jersey Supreme Court Expands NJLAD's Scope: Non-Disparagement Clauses Now Unenforceable in Employment Agreements

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The New Jersey Law Against Discrimination (NJLAD) prohibits provisions in employment contracts and settlement agreements that have "the purpose or effect of concealing the details relating to a claim of discrimination, retaliation, or harassment"—a restriction in place since 2019. The Legislature has determined these non-disclosure provisions are "against public policy and unenforceable."

Last year, in *Savage v. Township of Neptune*, the Supreme Court of New Jersey considered whether the NJLAD's ban on non-disclosure provisions extended to non-disparagement clauses. In determining that it does extend to non-disparagement clauses, the Court supported its decision by relying on the broad and remedial purpose of the NJLAD. The Supreme Court observed that "[t]o accuse someone of misconduct is to disparage them[.]" In the Court's view, the simple act of sharing details about allegations of discrimination, retaliation, or harassment would "naturally" tend to disparage or impugn an employer's reputation. If these details could be suppressed by a non-disparagement provision, it would undermine the NJLAD's plain language and the Legislature's intent. The Court did leave open "in theory" the possibility that "parties can agree not to disparage one another by disclosing information that has nothing to do with 'details relating to . . . claim[s] of discrimination, retaliation, or harassment.'"

In cases where the courts interpret a statute, the Legislature is free to adopt, amend, or reject the judicial interpretation through new legislation. In this instance, senators have introduced Senate Bill 1688 (S1688), which would amend the text of the NJLAD to codify the *Savage* decision. The proposed legislation expressly states that "non-disparagement provisions" and "other similar agreement[s] shall be deemed against public policy and unenforceable." Earlier this month, on March 3, 2025, the Senate Labor Committee favorably recommended the bill on a 4-1 vote to the full Senate, where it is now pending.

The *Savage* decision and, if adopted, S1688 place substantial restrictions upon the use of non-disparagement clauses in employment contracts and settlement agreements for claims arising under the NJLAD. For example, if an employee has a contractual cause of action and the matter settles, a non-disparagement clause would not violate the NJLAD. However, if the same employee now alleges age discrimination as well, a settlement agreement with a non-disparagement clause would violate the NJLAD unless narrowly written to comply with the statute. It appears likely that employees and their attorneys will raise claims of discrimination, retaliation, or harassment – even if these claims are not particularly meritorious – simply to avail themselves of the NJLAD's protections.

Recommended Actions for Employers

Going forward, employers should carefully review employment contracts and settlement agreements to make sure that any non-disparagement provisions are narrowly tailored and do not have the effect of concealing details relating to any claim of discrimination, retaliation, or harassment. Employers also should review prior agreements to ensure compliance with the NJLAD prior to bringing any action to enforce a non-disparagement obligation against a former employee.

Porzio's employment and labor attorneys are ready to counsel employers and design tailored training and prevention programs to minimize claims and avoid litigation.