

Publications

New Mexico Employers Must Contend With More Than COVID-19 When They Get Back To Work

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As employers begin to reopen their businesses and employees start to return to work, New Mexico employers will need to contend with new workplace laws in addition to confronting the myriad workplace changes wrought by COVID-19).

Nondisclosure Agreements

As of May 20, 2020, New Mexico has joined other states like California, Illinois, New Jersey, New York, Oregon, and Washington in limiting nondisclosure provisions in settlement agreements. A nondisclosure provision that does not comply with the requirements described below is void and unenforceable as a matter of law.

Employers are now prohibited from requiring an employee, as a term of employment, to sign a nondisclosure provision of a settlement agreement relating to a claim of sexual harassment, discrimination, or retaliation in the workplace brought by the employee. Further, a nondisclosure provision may not prevent the employee from disclosing a claim of sexual harassment, discrimination, or retaliation occurring in the workplace or at a work-related event coordinated by or through the employer.

This does not prohibit a settlement agreement between an employee or former employee alleging sexual harassment, discrimination, or retaliation from containing confidentiality provisions. A confidentiality provision is permitted when: (1) it relates to the monetary amount of a settlement; or (2) at the employee's request, it prohibits disclosure of facts related to the underlying sexual harassment, discrimination, or retaliation claim that could lead to the identification of the employee. However, a confidentiality provision cannot prevent disclosing information if the disclosure is required to be made in a judicial, administrative, or other governmental proceeding pursuant to a valid subpoena or other applicable order as otherwise required by law.

Employers should ensure that their settlement agreements comply with these new limitations on nondisclosure provisions.

Pregnancy Discrimination

New Mexico also recently adopted the Pregnant Worker Accommodation Act. The law prohibits discrimination on the basis of pregnancy, childbirth, or condition related to pregnancy or childbirth. The law further makes it an unlawful discriminatory practice for an employer to refuse or fail to make reasonable accommodation for an employee or job applicant with a need arising from pregnancy, childbirth, or condition related to pregnancy or childbirth. An employer is also prohibited from requiring an employee to take paid or unpaid leave if another reasonable accommodation can be provided unless the employee voluntarily requests to be placed on leave or the employee is placed on leave pursuant to federal law. A "reasonable accommodation" means a modification or adaptation of the work environment, work schedule, work rules or job responsibilities and reached through good faith efforts to explore less restrictive or less expensive alternatives to enable an employee to perform the essential functions of the job and that does not impose an undue hardship on the employer.

Contact your Vorys lawyer if you have questions about these new laws or your other obligations affecting your New Mexico workforce.

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Vorys COVID-19 Task Force

Outside of this new law, employers continue to face myriad issues as COVID-19 continues to spread and impact communities and workplaces (some of these issues are addressed in our prior alerts [located here](#)). We will continue to keep you posted on any important developments. In the meantime, if you have any questions regarding this new law or any other aspect of COVID-19, please contact your Vorys lawyer.

We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.