

Release of Bombshell Provides Renewed Focus on NDAs

PUBLISHED ON

December 30, 2019

The creation of the new movie "Bombshell" has brought up interesting questions when it comes to nondisclosure agreements (NDAs).

The filmmakers behind the movie wanted authenticity and truth in telling the story of the women who exposed sexual harassment at Fox News, but needed first-hand accounts of what happened. However, the women portrayed in the movie settled their lawsuits against Fox and in doing so, signed NDAs promising they wouldn't go public with what happened during their time at Fox.

Until one did.

Former Fox News anchor Juliet Huddy, portrayed by Jennifer Morrison in "Bombshell," made the bold decision to [break her NDA](#) to speak with the film's screenwriter. Huddy [settled her lawsuit](#) in the high six figures after accusing former Fox News host Bill O'Reilly of sexually harassing her.

Huddy's decision to break her NDA highlights a movement away from such provisions in sexual harassment settlements, and even canceling ones still legally in effect. NBC Universal announced in October of 2019 that it would [release employees who contacted the company from their confidentiality agreements](#).

In the wake of the #MeToo movement, which began in late 2017, some states have passed laws prohibiting or restricting confidentiality provisions in sexual harassment settlement agreements. California, Illinois, Nevada, New Jersey, New York, Oregon and Vermont all have laws limiting or restricting such provisions in settlement agreements. Other states like Arizona, Tennessee, and Louisiana restrict such provisions in the public employer context where public funds are being used to settle such claims.

The New Jersey law, which went into effect in March, provides that nondisclosure provisions that have the purpose or effect of concealing details relating to discrimination, retaliation or harassment claims are unenforceable. The statute requires all settlement agreements related to such claims to include a notice that is bold and prominently displayed stating that although the parties have agreed to keep the settlement and underlying facts confidential, the provision is unenforceable against the employer if the employee publicly reveals sufficient details of the claim so that the employer is reasonably identifiable.

Employers in states with restrictions on NDAs would be well-served to consult legal counsel before including provisions related to confidentiality in settlement agreements with employees, including separation agreements that include a release of a harassment or discrimination claim. The employment law attorneys at Barley Snyder routinely review such agreements for legal compliance. Please contact any member of our [employment law group](#) for assistance.

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