

CLIENT NEWS BRIEF

Settlement Agreements To Resolve Employment Claims Filed By A Person Against Their Employer Can No Longer Contain No-Rehire Clauses

In the wake of the #MeToo movement, and as part of the ongoing legislative response to it, Governor Gavin Newsom signed Assembly Bill (AB) 749 into law, which prohibits no-rehire clauses in certain types of settlement and severance agreements. While the intent behind that law focused on victims of sexual harassment or sexual assault, the law is broad in scope and is not limited to such claims.

AB 749 applies to any settlement agreement between an employer and an “aggrieved person” entered into to resolve an employment dispute. An “aggrieved person” is defined as a “person who has filed a claim against the person’s employer in court, before an administrative agency, in an alternative dispute resolution forum, or through the employer’s internal complaint process.” Beginning January 1, 2020, California employers—including public agencies—will be prohibited from including no-rehire language in any settlement agreement to resolve a claim filed by such aggrieved persons against their employer. Existing agreements regarding an employment dispute containing a no-rehire clause will be void (as to that provision) as of January 1, 2020.

Under AB 749, no-rehire clauses can only be included where there is a good faith determination by the employer that the person entering into the settlement agreement engaged in sexual harassment or sexual assault. The bill further clarifies that employers are not required to continue employing or rehire a person if there is a legitimate nondiscriminatory or nonretaliatory reason for terminating or refusing to rehire the person. In addition, the settlement agreement can contain resignation or termination of employment language.

Takeaways

Employers should review and revise standard settlement and severance agreements regarding employment disputes and remove any no-rehire clauses. It is important to keep in mind that not all settlement agreements will be subject to this prohibition, only those to resolve a claim or claims filed by a person against their employer. Additionally, employers may see an uptick in applications for reemployment from employees who settled employment disputes with the employer in the past, and employers should be prepared on how to handle such applications.

If you have any questions about AB 749 or about labor and employment issues in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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Gabriela D. Flowers
Partner and Co-Chair
Labor and Employment Practice Group
Sacramento Office
gflowers@lozanosmith.com



Marina L. Ramirez
Associate
Los Angeles Office
mr Ramirez@lozanosmith.com



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