AB-749 Settlement agreements: restraints in trade. (2019-2020)

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Assembly Bill No. 749

CHAPTER 808

An act to add Chapter 3.6 (commencing with Section 1002.5) to Title 14 of Part 2 of the Code of Civil Procedure, relating to civil actions.

[Approved by Governor October 12, 2019. Filed with Secretary of State October 12, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 749, Mark Stone. Settlement agreements: restraints in trade.

Existing law provides that every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is void to the extent that the contract restrains that person.

This bill would prohibit an agreement to settle an employment dispute from containing a provision that prohibits, prevents, or otherwise restricts a settling party that is an aggrieved person, as defined, from working for the employer against which the aggrieved person has filed a claim or any parent company, subsidiary, division, affiliate, or contractor of the employer.

The bill would also clarify that an employer and an aggrieved person are free to agree to end a current employment relationship, or to prohibit or otherwise restrict the aggrieved person from obtaining future employment with the employer, if the employer has made a good faith determination that the person engaged in sexual harassment or sexual assault, as defined. The bill would further clarify that an employer is not required to continue to employ or rehire a person if there is a legitimate nondiscriminatory or nonretaliatory reason for terminating or refusing to rehire the person.

The bill would provide that a provision in an agreement entered into on or after January 1, 2020, that violates this prohibition is void as a matter of law and against public policy.

Vote: majority   Appropriation: no   Fiscal Committee: no   Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 3.6 (commencing with Section 1002.5) is added to Title 14 of Part 2 of the Code of Civil Procedure, to read:

CHAPTER 3.6. Agreements Settling Employment Disputes

1002.5. (a) An agreement to settle an employment dispute shall not contain a provision prohibiting, preventing, or otherwise restricting a settling party that is an aggrieved person from obtaining future employment with the employer against which the aggrieved person has filed a claim, or any parent company, subsidiary, division, affiliate, or contractor of the employer. A provision

in an agreement entered into on or after January 1, 2020, that violates this section is void as a matter of law and against public policy.

(b) Nothing in subdivision (a) does any of the following:

(1) Preclude the employer and aggrieved person from making an agreement to do either of the following:

(A) End a current employment relationship.

(B) Prohibit or otherwise restrict the settling aggrieved person from obtaining future employment with the settling employer, if the employer has made a good faith determination that the person engaged in sexual harassment or sexual assault.

(2) Require an employer to continue to employ or rehire a person if there is a legitimate non-discriminatory or non-retaliatory reason for terminating the employment relationship or refusing to rehire the person.

(c) For purposes of this section:

(1) "Aggrieved person" means 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.

(2) "Sexual assault" means conduct that would constitute a crime under Section 243.3, 261, 262, 264.1, 286, 287, or 289 of the Penal Code, assault with the intent to commit any of those crimes, or an attempt to commit any of those crimes.

(3) "Sexual harassment" has the same meaning as in subdivision (j) of Section 12940 of the Government Code.