

TEXAS BARS CONTRACT PROVISIONS PREVENTING DISCLOSURE OF SEXUAL ABUSE: HERE'S WHAT EMPLOYERS NEED TO KNOW

Insights
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Texas employers will need to ensure workplace confidentiality agreements don't prevent disclosure of sexual abuse or sexual assault in violation of a new law that takes effect on September 1. SB 835, which is known as "Trey's Law," aims to protect victims of sexual abuse and assault and prevent organizations from covering up incidents. The new law applies retroactively, which means it will cover new and existing confidentiality and nondisclosure provisions, including those in employment contracts and settlement agreements. Notably, the law has exceptions for other confidential terms, such as settlement payment amounts, and focuses on egregious conduct that most workplaces will hopefully not experience. Here's what employers need to know about this new law.

What Does SB 835 Require?

Trey's Law was named after Trey Carlock, who died by suicide at age 28. He had signed a nondisclosure as part of a settlement with a summer camp where he was the victim of sexual abuse as a child. SB 835, which was unanimously approved by Texas lawmakers, forbids the use of confidentiality or nondisclosure provisions to the extent they seek to prohibit someone from disclosing sexual abuse, sexual assault, or related facts about such abuse regarding themselves or others. The law applies to nondisclosure or confidentiality provisions in any kind of agreement, including employment and settlement agreements.

The new law defines "sexual abuse" as child abuse under the Texas Family Code, as well as sexual assault, aggravated

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sexual assault, human trafficking, compelling prostitution, indecency with a child, and sexual performance by a child, as defined under certain sections of the state penal code.

While other types of sexual misconduct, like sexual harassment, are not included in SB 835's ban on confidentiality and nondisclosure provisions, it does not impact Texas employers' continued obligation to comply with federal and state anti-discrimination and anti-harassment laws.

Fortunately, employers do not routinely encounter criminal sexual abuse in the workplace. But, to the extent that sexual abuse or sexual assault is ever implicated in an employment situation, employers should be aware of how it is defined under the Texas Penal Code and how this law impacts confidentiality and nondisclosure agreements.

What is Not Covered?

SB 835 is limited in scope, as it only applies to confidentiality and nondisclosure provisions to the extent they prohibit disclosure of sexual abuse or assault. It does not prohibit confidentiality altogether. Parties to an agreement may keep other aspects of a settlement agreement confidential, such as the amount or payment terms, as long as the confidentiality requirement does not prevent disclosure of sexual abuse or related facts.

Similarly, SB 835 does not stop employers from prohibiting employees from disclosing company trade secrets or proprietary information. The law's primary aim is to protect victims of sexual abuse and assault.

What Should Employers Do Now?

Even though Texas employers likely are not required to revise confidentiality and nondisclosure provisions to specifically comply with this new law, employers should review such provisions to ensure they contain general "savings" language that says they do not apply if otherwise prohibited by law. Multistate employers should note that other states have similar requirements to the new Texas law and may even impose additional restrictions on what employers cannot prevent employees from disclosing. Now is a good time to consider reviewing all of your workplace agreements with legal counsel to ensure compliance with applicable federal and state laws.

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This new law also highlights the importance of providing a safe workplace and having appropriate policies and protocols in place. You may also want to review your employee handbook and all related standalone policies to ensure they prohibit all forms of unlawful conduct, including discrimination, harassment, and sexual misconduct.

Conclusion

We will continue to monitor legislative developments in Texas, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in [our Texas offices](#).

Law Clerk [Janna Offenberger](#) contributed to authoring this Insight.