

Assembly Bill No. 2143

CHAPTER 73

An act to amend Section 1002.5 of the Code of Civil Procedure, relating to civil actions.

[Approved by Governor September 11, 2020. Filed with Secretary of State September 11, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2143, Mark Stone. Settlement agreements: employment disputes.

Existing law prohibits 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.

This bill would require the aggrieved person to have filed the claim in good faith for the prohibition to apply.

Existing law creates an exception from the prohibition if the employer has made a good faith determination that the aggrieved person engaged in sexual harassment or sexual assault.

This bill would require the determination of sexual assault or sexual harassment to be documented by the employer before the aggrieved person filed the claim. The bill would also expand this exception to include determinations that the aggrieved person engaged in any criminal conduct.

The people of the State of California do enact as follows:

SECTION 1. Section 1002.5 of the Code of Civil Procedure is amended to read:

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 and documented a good faith determination, before the aggrieved person filed the claim that the aggrieved person engaged in sexual harassment, sexual assault, or any criminal conduct.

(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, in good faith, 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.