

# MSF Client Alert

[MSF Employment Practice](#)

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## Federal Government Bars Pre-Dispute Non-Disclosure & Non-Disparagement Clauses for Sexual Assault & Harassment Claims

*On December 7, 2022, the Speak Out Act was signed into law, limiting the enforceability of pre-dispute non-disclosure and non-disparagement agreements relating to claims of sexual assault or sexual harassment. The law went into effect immediately and applies to claims filed on or after December 7, 2022.*

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### The Speak Out Act

The Speak Out Act (the “Act”) precludes the use of pre-dispute non-disclosure and non-disparagement agreements for claims of sexual assault and sexual harassment. Agreements signed before the unlawful conduct, such as in connection with an employment agreement or standard business protection agreement, will not be enforceable against future claims of sexual assault or sexual harassment. The Act does not preclude pre-dispute non-disclosure or non-disparagement agreements that apply to other sensitive claims, such as discrimination.

Notably, the Act is not limited to the employment context. The Act also applies to agreements with independent contractors, business partners, consumers, and other situations where individuals may be required to enter into agreements containing non-disclosure and non-disparagement provisions in a non-employment context.

The Act’s coverage is limited to claims of sexual assault and sexual harassment filed on or after December 7, 2022. Thus, the Act **does not** preclude the use of non-disclosure and non-disparagement provisions in settlement agreements for claims of harassment or assault filed prior to December 7, 2022. Notably, the Act does not define the term “filed,” which may become an area to be clarified through court action.

The Act follows enactment of another companion federal law. As noted in our [prior alert](#), the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 invalidates pre-dispute arbitration agreements that preclude an individual from bringing sexual harassment or sexual assault claims in court. This law went into effect on March 3, 2022 and applies to claims arising on or after that date. Since its enactment, courts have ruled that the legislation does not apply retroactively to claims filed prior to March 3, 2022, even when arbitration proceedings had not yet commenced as of March 3, 2022.

### Recommendations For Employers

With the various federal and state laws passed governing claims alleging sexual harassment, it appears that both transparency relating to these claims and settlements is at the forefront.

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Businesses should review any agreements containing non-disclosure or non-disparagement provisions that may be subject to the Act. As such language will not invalidate the agreements in their entirety, consideration of whether to include a carveout for future claims of sexual harassment and sexual assault in these agreements is warranted. Regarding arbitration agreements, businesses should be prepared for the possibility of individuals who are subject to arbitration clauses to elect to file claims of sexual harassment and/or assault in court at their discretion rather than engaging in arbitration. Businesses should also ensure that such agreements comply with any applicable state law.

Please contact an attorney in MSF's Employment Group if you need assistance with respect to this information.



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