

New Jersey Law Journal, "Silencing the Facts? The Limits of Confidentiality in New Jersey Employment Settlements," by Christopher Turano, Esq., 4-24-26

Kaufman Dolowich's Christopher Turano, New Jersey Partner, authored an article in the New Jersey Law Journal explaining how New Jersey's 2019 amendment to the Law Against Discrimination limits the use of confidentiality provisions in employment-related settlements, particularly those involving discrimination, harassment, and retaliation claims. It examines the statute, its intent, and recent case law—especially *Savage v. Township of Neptune*—to clarify what can still be kept confidential and how employers can structure compliant settlement and non-disparagement provisions.

Silencing the Facts? The Limits of Confidentiality in New Jersey Employment Settlements

This article dissects the statute's text, legislative intent, and key case law, most notably the New Jersey Supreme Court's decision in *Savage v. Township of Neptune*, 257 N.J. 204 (2024), to assess how these principles are being applied in practice and to offer updated drafting guidance.

By Christopher Turano, Kaufman Dolowich LLP
April 24, 2026

New Jersey has joined a growing national movement to curb non-disclosure agreements (NDAs) in employment disputes and, in several respects, is at the forefront of that trend. Enacted in 2019 amid the #MeToo movement, N.J.S.A. 10:5-12.8(a), the Law Against Discrimination (LAD), as amended by P.L. 2019, c. 39, voids certain confidentiality provisions that once shielded employers from public scrutiny over discrimination, harassment, and retaliation claims. This amendment has reshaped settlement-drafting practices, forcing litigators to navigate a narrower path between compliance and protecting legitimate business interests.

Yet confusion persists. Employers wonder, exactly what information regarding the underlying lawsuit and resulting settlement can remain confidential? What about reputational safeguards? And do nondisparagement clauses offer a workaround? This article dissects the statute's text, legislative intent, and key case law, most notably the New Jersey Supreme Court's decision in *Savage v. Township of Neptune*, 257 N.J. 204 (2024), to assess how these principles are being applied in practice and to offer updated drafting guidance.

The Statutory Framework

- N.J.S.A.10:5-12.8(a) provides: "A provision in any employment contract or settlement agreement which has the purpose or effect of concealing the details relating to a claim of discrimination, retaliation, or harassment (hereinafter referred to as a 'non-disclosure provision') shall be deemed against public policy and unenforceable against a current or former employee ... who is a party to the contract or settlement." As reinforced by *Savage*, this statute states courts must look beyond form and analyze the substance of provisions, determining if they have the "purpose or effect" of concealment. Even provisions not expressly framed as confidentiality clauses, such as non-disparagement clauses, may be unenforceable if they have the purpose or effect of preventing discussion of the underlying claim.

Furthermore, the statute's mandatory notice provisions amplify circumstances under which confidentiality provisions will not be enforced. Namely, settlements resolving LAD-related claims must include bold, prominent language stating: "Although the parties may have agreed to keep the settlement and underlying facts confidential, such a provision in an agreement is unenforceable against the employer if the employee publicly reveals sufficient details of the claim so that the employer is reasonably identifiable." Failure to include this notice renders the confidentiality provision unenforceable against the employer.

Revisiting *Savage v. Township of Neptune*: Substance Over Form

Since its issuance, the New Jersey Supreme Court's decision in *Savage* continues to provide baseline guidance as to how N.J.S.A. 10:5-12.8 applies, and likely will be applied, in practice. In *Savage*, the plaintiff, Police Sergeant Christine Savage, settled LAD claims alleging sexual harassment, discrimination, and retaliation against defendant Neptune Township. The resulting settlement agreement barred disparagement of parties or counsel and required confidentiality of its terms. After *Savage* detailed her alleged abuse during a television interview, the defendants moved to enforce the provision.

The court ultimately held the non-disparagement clause unenforceable. The court reasoned that provisions with the "purpose or effect" of concealing details relating to a claim of discrimination, retaliation, or harassment violate public policy, regardless of how they are labeled—including non-disparagement clauses. The court emphasized that the LAD is intended to protect employees' ability to speak out about workplace wrongdoing, and that any clause that chills such disclosure runs afoul of the statute. Accordingly, the scope of the parties' agreement in the non-disparagement clause, to not make any statements which would tend to disparage or impugn reputation of any party, was so broad as to prevent the plaintiff from revealing information that was at the core of what relevant LAD section protected; thus, the court held the non-disparagement provision unenforceable.

In the time since *Savage* was decided, its impact has become clearer, particularly in how courts and practitioners evaluate non-disparagement and confidentiality provisions. The decision signals that similar clauses are vulnerable, even when couched in "no bad-mouthing," "mutual respect," or other non-disparagement language. The ruling reflects a broader trend, also seen in states such as New York and California, toward limiting confidentiality restrictions in workplace misconduct matters.

For example, New York's General Obligations Law Section 5-336 generally bars employers from requiring nondisclosure of the underlying facts of discrimination, harassment, or retaliation claims; any such provision must reflect the complainant's preference and comply with specific timing and revocation protections. California's "Silenced No More Act" (SB 331) similarly prohibits confidentiality or non-disparagement provisions that have the purpose or effect of restricting an employee's right to disclose unlawful workplace conduct, including harassment and discrimination.

At the federal level, the National Labor Relations Board (NLRB) has taken a similarly restrictive approach. In *McLaren Macomb*, 372 NLRB No. 58 (Feb. 21, 2023), the board held that broadly drafted non-disparagement and confidentiality provisions in severance agreements can violate the NLRA by chilling employees' Section 7 rights, including the right to discuss workplace conditions and cooperate with the board. The EEOC has likewise emphasized that employers should not silence those who report harassment and should limit confidentiality to what is necessary and legally permitted during investigations.

Show Me the Money—or Not?

The statute and *Savage* focus primarily on factual details of an employee's claim; however, little to no subsequent decisions from courts have been issued addressing to what extent confidentiality of purely monetary terms, and other provisions affording relief to a plaintiff, remain enforceable. Monetary terms and related payment details are often treated in practice as distinct from the statute's core concern with concealment of underlying facts. But despite the fact that the statute does not expressly address these terms, practitioners should still proceed carefully, particularly where financial figures could indirectly signal the nature or severity of the allegations.

Reputational Protections vs. Unlawful NDAs

Employers retain some tools to protect legitimate business interests. Provisions addressing attorney work product, negotiation strategy, or trade secrets generally fall outside the statute's scope if they do not restrict discussion of claim-related facts. However, attempts to impose "backdoor NDAs" such as restrictions on speaking with the media or discussing the resolution are vulnerable if they effectively suppress discussion of the underlying claim. Notably, subsection (c) of N.J.S.A. 10:5-12.8 exempts non-competition clauses and agreements not to disclose trade secrets or proprietary information from the statute's anti-NDA rule, provided they do not operate as a surrogate for a non-disclosure provision that conceals the details of a claim of discrimination, harassment, or retaliation.

Non-Disparagement: The New Minefield

Non-disparagement clauses are problematic if they deter truthful fact disclosure. As Savage made clear, a broadly worded non-disparagement clause is unenforceable where it prohibits statements about the underlying facts from which discrimination claims arise.

Practically speaking, more narrowly tailored provisions such as those limited to knowingly false or misleading statements may still be viable, but courts will closely examine whether they have a deterrent effect on protected disclosures.

A common drafting approach is to include an explicit carve-out, such as: "Nothing herein prohibits disclosure of factual details relating to claims of discrimination, harassment, or retaliation as protected by N.J.S.A.10:5-12.8."

Enforcement Risks and Litigation Trends

It is clear provisions that violate N.J.S.A. Section 10:5-12.8 are unenforceable against employees, reducing the likelihood of successfully pursuing breach claims based on protected disclosures, and significantly handicapping enforcement options for employers.

Employers may still litigate disputes over provisions that fall outside the statute's scope, but the risk of invalidation and associated fee exposure remains substantial. Practitioners also report increased willingness by employees to publicly disclose allegations, altering settlement dynamics and negotiation leverage.

Practical Guidance: Drafting Compliant Agreements

While Savage provides important direction, there has been limited judicial elaboration since the decision. Conservative, compliance-focused drafting therefore remains the prudent approach when crafting settlement agreements for discrimination, harassment and/or retaliation claims:

- **Avoid broad NDAs:** Use narrowly tailored confidentiality provisions that focus on protecting limited aspects of the agreement, such as monetary terms, while making clear that nothing restricts disclosure of claim-related facts.
- **Include statutorily-required language:** Ensure that settlement agreements expressly include language reflecting the requirement prescribed by N.J.S.A.10:5-12.8 which clearly preserves the employee's right to disclose claim-related details without penalty.
- **Narrow non-disparagement clauses:** If used, make non-disparagement clauses mutual, limited to knowingly false or misleading statements, and avoid language that could discourage truthful disclosures about claim-related facts.
- **Include the required statutory notice:** Ensure it is bold and prominently displayed.
- **Advise clients early:** Explain the employee's right to disclose claim-related facts before settlement talks begin so employers understand what can and cannot be kept confidential.

Conclusion: Balancing Transparency and Resolution

N.J.S.A. Section 10:5-12.8 has fundamentally altered the settlement landscape in New Jersey, prioritizing transparency over confidentiality in discrimination, harassment, and retaliation matters. While this shift continues to complicate traditional settlement strategies, careful drafting can still preserve the benefits of resolution while remaining compliant.

For employers, the path forward lies in recognizing that the current legal framework limits broad confidentiality and instead requires careful, compliance-conscious structuring of settlements.

Christopher Turano is a partner in Kaufman Dolowich's New Jersey office. He focuses his practice in commercial litigation, labor and employment law, general liability, and professional liability.

Reprinted with permission from the Feb. 23, 2026 edition of "New Jersey Law Journal" © 2026 ALM Global Properties, LLC. All rights reserved. Further duplication without permission is prohibited, contact 877-256-2472 or reprints@alm.com. "