

NJ Limits on Harassment NDAs Could Crush Burdened Courts

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New Jersey's new law barring mandatory secret deals to resolve workplace harassment claims may cause more employees to take their cases to trial, generating litigation that would further overburden the state's courts.

Additionally, courtroom challenges may arise from concerns that the measure disregards the Federal Arbitration Act by barring provisions that waive employees' rights to sue if the law is violated. The measure has received pushback because of the U.S. Supreme Court's holding in *Kindred Nursing Centers LP v. Clark* that the Federal Arbitration Act preempts state law that would preclude arbitration agreements.

McCarter partner Christopher Mayer advised that "the arbitration provision certainly comes up against federal law" and that employers would be wise to "revisit" any agreements that are now void under New Jersey law.