

## **Former JUUL Employee Seeks Injunction Against Pre-Employment NDA**

By [Jessica L. Westerman](#)  
July 9, 2020

On June 4, 2020, a former employee of electronic cigarette maker JUUL Labs, Inc., filed a complaint in California District Court seeking to enjoin JUUL's enforcement of a non-disclosure agreement ("NDA") she was required to sign as a condition of her employment. The former employee, Marcie Hamilton, alleges in her complaint that JUUL required her to sign an NDA prohibiting her from disclosing "everything related to JUUL" (emphasis in original) prior to beginning her employment. She further alleges that the "terrorizing effect" of the NDA, which JUUL requires all of its employees to sign prior to beginning their employment, unlawfully precludes employees from "blowing the whistle" to government or law enforcement agencies about suspected illegal activity, in violation of California law.

As alleged in the complaint, the JUUL NDA requires employees to "hold in strictest confidence" and not disclose, among other things, JUUL's customers, products, markets, and any "information disclosed by the Company to [the employee] and information developed or learned by [the employee] during the course of employment." Employees are prohibited from disclosing such information to "any person, firm, or corporation, without written authorization from the Company's Board of Directors." Having no temporal limit, the prohibition "lasts forever." According to the complaint, JUUL relies on these NDAs to prevent employees from providing relevant information in ongoing government investigations, as well as administrative and judicial actions, into the use of JUUL's products by minors and the health dangers of its products, more broadly.

Ms. Hamilton alleges that the NDA's prohibition on disclosing seemingly any information about JUUL whatsoever to any entity whatsoever violates California Labor Code § 1102.5(a). Section 1102.5(a) prohibits employers from making, adopting, or enforcing a rule, regulation, or policy that "prevent[s] an employee from disclosing information to a government or law enforcement agency," or to "any public body conducting an investigation, hearing, or inquiry," if the employee reasonably believes the information discloses a violation of law. Ms. Hamilton also alleges that the NDA violates California Government Code § 12964.5. Section 12964.5 was enacted in response to the #MeToo movement and prohibits employers from requiring employees to sign any document that "purports to deny

the employee the right to disclose information about unlawful acts in the workplace, including, but not limited to, sexual harassment.” Ms. Hamilton alleges that in violating these and other California statutes, the NDA has caused “ongoing and irreparable public harm.” In her lawsuit, she seeks a finding that the NDA is unenforceable and an order enjoining JUUL from attempting to enforce it against her, as well as other forms of relief.

### **Employers’ Use of NDAs to Intimidate and Muzzle Employees**

Unfortunately, [NDAs](#) like the one JUUL requires employees to sign as conditions of their employment are not uncommon. To the contrary: large corporations - and powerful individuals - often require employees to sign similar NDAs as conditions of their employment in an effort to stymie competition, insulate themselves from prosecution, and even protect themselves from public embarrassment. As Ms. Hamilton points out in her complaint, former Hollywood producer and convicted rapist Harvey Weinstein used similar pre-employment NDAs to prevent victims of his sexual abuse from reporting it to law enforcement. [See](#) Edward Helmore, “[Harvey Weinstein lawsuit: attorney general says ‘we have never seen anything as despicable,’](#)” (February 12, 2018).

Disgraced restaurateur Mike Isabella likewise used draconian NDAs to prevent his employees from reporting sexual harassment in his restaurants, including by prohibiting employees from disclosing any “details of the personal and business lives of Mike Isabella, his family member, friends, business associates and dealings” - seemingly without any employment-related purpose whatsoever. In that case, an employee’s breach of the NDA carried with it an unconscionably high penalty of \$500,000 *per breach*, plus attorneys’ fees expended by the company as a result of the breach. [See](#) Maura Judkis and Time Carman, “[Mike Isabella’s restaurants used nondisclosure agreements to silence sexual harassment accounts, lawsuit alleges.](#)” (April 3, 2018).

Not all states have statutes like California’s, which expressly prohibit employers from restricting employees’ ability to disclose information about suspected violations of law to government or law enforcement agencies. But many states nevertheless uphold a clear public policy against doing so. If you signed an NDA as a condition of your employment and want to blow the whistle about any type of illegal conduct by your employer, consider consulting with an employment attorney to determine whether the agreement prohibits you from providing information about violations of law to government or law enforcement agencies and, if so, whether it may be unenforceable.