

Services

Labor & Employment
Non-Competes &
Restrictive Covenants

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Governor Walz Signs into Law Non-Compete Ban in Minnesota

Non-compete agreements are often an important part of a business deal or a severance agreement. Under a typical non-compete, a former employee of a company agrees not to compete with a former employer after the employment period is over. Often the agreements are time-limited, focused on certain competitive activities, and on a specific geographic footprint. On May 24, 2023, Governor Walz signed Minn. Stat. § 181.988 into law. This new statute, which goes into effect July 1, 2023, affects the enforcement and legality of non-compete agreements and will significantly impact employers across the state. The law voids almost all non-compete agreements entered into on or after the implementation date, with limited exceptions for agreements entered into in connection with the sale or dissolution of a business. Minnesota now joins a growing number of states with similar bans in place, such as California, Oklahoma, and North Dakota.

Minn. Stat. § 181.988 overview

Non-compete agreements, contracts that restrict an employee's ability to work for a competitor after leaving a company, have been a staple across industries for years. Minn. Stat. § 181.988 curtails these agreements, significantly limiting their enforceability.

The statute defines "covenant not to compete" as "an agreement between an employee and employer that prevents the employee, after termination of the employment, from performing:

1. work for another employer for a specified period of time;
2. work in a specified geographical area; or
3. work for another employer in a capacity that is similar to the employee's work for the employer that is party to the agreement."

Minn. Stat. § 181.988 effectively voids such agreements. Fortunately for employers, the statute enumerates various exceptions, as outlined below.

Exceptions

Notably, non-solicitation and non-interference agreements and clauses are permitted under the statute. Both provide the protections that are often the motivating factors for the more restrictive non-competition clauses—preventing former employees from stealing a company's employees, customers, and prospects, and interfering with current business relationships.

The statute also allows for confidentiality agreements, trade-secret protections, invention assignments, forfeiture of equity or incentives for employees who elect to compete with the employer, and, as mentioned above, non-competes incident to the sale or dissolution of a business.

Enforcement and penalties

The good news is that if an agreement contains a prohibited non-competition clause, that alone will not render the other provisions of the agreement unenforceable. However, employers will want to be very careful in considering any litigation related to such matters, as the statute provides for attorney's fees for a prevailing employee.

Implications for employers

So, what does Minn. Stat. § 181.988 mean for employers in Minnesota?

1. **Reevaluation of current agreements:** Employers should audit current employment agreements to eradicate non-compete provisions for those agreements in use on or after July 1, 2023. Employees may also approach employers with questions regarding their current agreements, and companies will need to be prepared with answers.
2. **Increased employee mobility:** With the limitations on non-compete agreements, there may be an increase in employee mobility. Employers may need to prepare for the possibility of greater employee turnover and take active steps to assess and develop strategies for retaining valuable staff.
3. **Protection of business interests:** Companies will need to find alternative ways to protect their business interests, confidential information, and trade secrets. Robust non-solicitation, invention assignment, and confidentiality and trade secret language can help achieve this goal. But, as previously discussed by Husch Blackwell, employers must remain cognizant of recent NLRB restrictions on confidentiality agreements.

Contact us

If you have questions concerning how this new law affects your business or how to comply with the law, or if you need assistance in ensuring that your current employment agreements remain valid and enforceable, please contact Jon Anderson, Zoey Mayhew, or your Husch Blackwell attorney.