

THOUGHT LEADERSHIP

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Services

Labor & Employment
Non-Competes &
Restrictive Covenants

Professional

JENNA BROFSKY
KANSAS CITY:
816.983.8305
JENNA.BROFSKY@
HUSCHBLACKWELL.COM

New York May Become the Fifth State to Ban Non-Competes

On December 22, 2023, Governor Hochul vetoed the bill, stating that while she recognizes the need to restrict non-compete agreements for middle-class and low-wage workers, that interest must be balanced with New York employers' ability to retain highly compensated talent in a competitive market. Governor Hochul indicated that she would support a bill that exempted workers who earn more than \$250,000 per year from the non-compete ban.

A significant development is underway in New York as the state is on the verge of outlawing non-competition agreements for employees. Governor Kathy Hochul is currently reviewing a bill that has been fast-tracked through the state legislature. This bill aims to prohibit any contract that limits individuals from engaging in a lawful profession, trade, or business activity. If the bill is signed into law, it will amend the New York Labor Law and prevent employers in the state from enforcing non-compete agreements against employees who are economically dependent on the employer and have obligations to perform duties.

Governor Hochul has previously expressed her support for eliminating non-compete agreements for workers earning below the median wage in New York. However, the bill currently under consideration would apply to **all** employees in the state, irrespective of their compensation level.

If passed, New York will join four other states to implement a comprehensive ban on noncompete agreements. Minnesota recently joined this growing list of states by enacting restrictions on such agreements, effective July 1. The states of California, North Dakota, and Oklahoma already have long-standing bans on non-competes dating back to the 19th century. Additionally, other states

like Colorado, Illinois, and Maryland have passed recent legislation that limits non-compete agreements for higher-earning employees.

Implications for New York employers

If the bill becomes law, it would grant employees and contractors the right to file a lawsuit against their employer within two years of various triggering events, including the signing of a prohibited non-compete agreement, becoming aware of its existence, termination of employment or contract, or any enforcement action taken by the employer.

Furthermore, under the language of the bill, a court would have the authority to invalidate a non-compete agreement and award the employee or contractor compensation for lost compensation, damages, attorney's fees, costs, and liquidated damages of up to \$10,000.

Notably, the bill provides exceptions for certain types of restrictive covenants including non-disclosure agreements that protect trade secrets and confidential information, as well as agreements that prohibit the solicitation of clients that the covered individual learned about during their employment.

Although the bill does not explicitly mention employee non-solicitation agreements, it explicitly states that it does not affect the enforceability of such agreements under other federal, state, or local laws, rules, or regulations. Therefore, existing common law standards, such as the reasonableness test in New York, are likely to continue applying to non-disclosure provisions and may limit the scope of client non-solicitation provisions.

Finally, we anticipate that if passed, the ban on non-compete provisions will face legal challenges from a variety of entities that could delay the effective date (which is proposed as 30 days after it is signed by the governor.) Of note, the bill states that it only applies to contracts “entered into or modified on or after” the effective date.

Contact us

Husch Blackwell will continue to monitor the progress of this legislation to provide updates on its status. Should you have any questions, please do not hesitate to contact Jenna Brofsky, Melodie Arian, or your Husch Blackwell attorney.

Read the March 19, 2024 update.