

Services

Labor & Employment
Non-Competes &
Restrictive Covenants

Professional

JOSEF S. GLYNIAS
ST. LOUIS:
314.345.6208
JOE.GLYNIAS@
HUSCHBLACKWELL.COM

New Illinois Law Prohibits Noncompete Agreements With 'Low-Wage' Employees

On August 19, 2016, Illinois Gov. Bruce Rauner signed the Illinois Freedom to Work Act (S.B. 3163). The new law, which takes effect January 1, 2017, prohibits employers from entering into “a covenant not to compete with any low-wage employee.” At this point, the law does not apply to employers that pay their hourly employees more than \$13 per hour. Further, the law is inapplicable to employers that do not require employees making \$13 per hour or less to sign noncompete agreements. Nor does the law affect nondisclosure agreements or similar agreements designed to protect an employer’s confidential information.

Defining 'Low-Wage Employee'

The new law defines “low-wage employee” as an employee who earns the greater of (1) the hourly rate equal to the minimum wage required by the applicable federal, state or local minimum wage law or (2) \$13 per hour. Thus, until an applicable minimum wage exceeds \$13 per hour (which has not yet occurred anywhere in Illinois), this law will apply to agreements with workers who make \$13 per hour or less.

The prohibited agreements are defined to include those that restrict the low-wage employee from performing:

Any work for another employer for a specified period of time;

Any work in a specified geographical area; or

Work for another employer that is similar to such low-wage employee’s work for the employer included as a party to the agreement.

Any such agreement entered into after the Act's effective date will be "illegal and void."

What This Means to You

Employers will be glad to hear that such agreements entered into prior to the effective date will not be voided by this law. However, employers should plan to discontinue by January 1, 2017, the practice of requiring low-wage employees to sign agreements with time- and geography-specific work restrictions, as well as any restriction on the employee's ability to perform "similar" work for another employer.

In addition to the issue of how broadly the term "similar" will be interpreted, an unanswered question is how the law will affect nonsolicitation agreements that restrict a low-wage employee's ability to solicit customers or other employees. As the Act does not expressly address this issue, Illinois employers must wait to see how broadly the courts interpret the law's definition of "covenant not to compete."

Contact Us

For more information on how the new Illinois law may affect your business, contact Josef Glynias, Brian Stair or another member of Husch Blackwell's Labor & Employment team.