

NEW YORK STATE MOVES TO BAN EMPLOYEE NON-COMPETE AGREEMENTS

INSIGHT

New York inched closer to fully banning non-compete agreements on June 20, 2023, with the Legislature approving a bill banning their use in the future. The bill will soon be sent to Governor Kathy Hochul, who is expected to sign the measure into law.

This development and more will be discussed June 22 in Harris Beach's [Labor and Employment webinar series](#). [Register here](#) to join us tomorrow and read below for more details on this bill.

NEW SECTION IN LABOR LAW WILL PROHIBIT NON-COMPETE AGREEMENTS

The bill, [Bill 3100](#), creates a new section in the New York State Labor Law (Section 191-d) prohibiting employers and employees from entering into non-compete agreements after the bill is signed and goes into effect.

Critically, the measure does not impact existing non-compete agreements. The amendment goes into effect 30 days after Governor Hochul signs the measure; at that point, employers and workers will be prohibited from entering non-compete agreements.

The new law will give employees bound by a non-compete the right to sue in state court. In turn, the law empowers courts to:

- void any contractual clause that functions as a non-compete,
- award damages for lost compensation,
- award liquidated damages of up to \$10,000, and
- award employee's attorneys' fees.

LAW LIMITED TO "NON-COMPETE" AGREEMENTS

The law is ostensibly limited to pure "non-compete agreements," which are defined as any agreement or contractual clause between an employer and worker that "prohibits or restricts" the worker "from obtaining employment after the conclusion of [their] employment with the employer."

Notably, the law does not limit its scope to “employees,” and instead expands its reach to any “covered individual” that is “in a position of economic dependence on” their “employer.” In other words, the law’s prohibition on non-compete agreements is not limited to the traditional employee-employer framework, and could theoretically apply to other working arrangements.

OTHER CLAUSES ARE STILL PERMISSIBLE

Further, the amendment clarifies it is not intended to prohibit several other clauses commonly found in employment agreements. The law states it does not prohibit:

- contracts or agreements for a “fixed term” of service;
- contracts or agreements prohibiting disclosure of “trade secrets,” confidential information, or “proprietary client” information; and
- contracts or agreements that prohibit solicitation of the employer’s clients and customers, if the worker learned of the clients through their employment.

Importantly however: the new law cautions that the above clauses can still be deemed unlawful if they would “otherwise restrict competition” in violation of the new law.

FEDERAL EFFORTS AND OTHER NEW YORK STATE MEASURES

There is a [similar movement at the federal level to ban non-competes](#). The General Counsel for the National Labor Relations Board issued a guidance memorandum opining that many non-compete agreements violate federal labor law protections, and the [Federal Trade Commission proposed a still-pending rule banning non competes](#). A final decision at the federal level to ban non-competes is sure to draw legal and political challenges. Those efforts, however, will likely take a backseat for companies in New York in light of this amendment.

And another proposed bill in the New York State Legislature is worth monitoring, too. [Senate Bill 6748](#), if passed, would not only invalidate future non-compete agreements, but also invalidate existing non-compete agreements. Additionally, the measure’s proposed scope is broader than “non-compete” agreements, and would also prohibit “de-facto non-compete clause[s]” and “non-disclosure agreements” that are “written so broadly” they “effectively preclude” workers from working in the same field after the conclusion of their employment. Bill 6748’s scope therefore tracks closely with the FTC’s proposed non-compete prohibition.

NEXT STEPS

As mentioned above, Governor Kathy Hochul is expected to sign [Bill 3100](#). If signed, the law will go into effect 30 days later and will invalidate employers’ ability to enter into new non-compete agreements at that point.

The amendment constitutes a momentous change in New York’s labor, employment, and commercial law. The law is rife with opportunity for disagreement and interpretation, and will almost certainly trigger litigation.

Businesses utilizing non-compete agreements should review their practices with experienced Labor & Employment counsel. Even if non-compete agreements are invalidated, other strategies can help protect businesses’ proprietary information and their investment in talent.

Harris Beach’s [New York Labor and Employment attorneys](#) are closely following this situation and related matters. Should you have questions about any of these developments or navigating these changes, please feel free to reach out to attorney [Daniel J. Moore](#) at (585) 419-8626 and dmoore@harrisbeach.com; attorney [Scott D. Piper](#) at (585) 419-8621 and spiper@harrisbeach.com; attorney [Ibrahim Tariq](#) at (585) 419-8556 and itariq@harrisbeach.com; or the Harris Beach attorney with whom you most frequently work.

This alert is not a substitute for advice of counsel on specific legal issues.

Harris Beach has offices throughout New York state, including Albany, Buffalo, Ithaca, Long Island, New York City, Rochester, Saratoga Springs, Syracuse and White Plains, as well as Washington D.C., New Haven, Connecticut and Newark, New Jersey.

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