VOL. 51, NO. 2 AUTUMN 2025

Employee Relations LAW JOURNAL

Colorado to Ban Most Healthcare Provider Restrictive Covenants and Refine Sale-of-Business Exception: What You Need to Know

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In this article, the authors review a Colorado bill that would block businesses from entering into restrictive covenants with certain healthcare workers and that would refine the current exemption allowing restrictive covenants related to the sale of a business. They also provide specific steps employers can take to prepare for the new law.

Colorado lawmakers recently passed a bill that will block businesses from entering into restrictive covenants such as non-competition and customer non-solicitation agreements with certain healthcare workers and refine the current exemption allowing restrictive covenants related to the sale of a business. Senate Bill 25-083 is expected to be signed into law by Governor Polis and take effect on August 6, affecting agreements entered into after that date. However, some questions and ambiguities remain. This article reviews the bill and provides specific steps employers can take to prepare for the new law.

WHAT HEALTHCARE PROVIDERS NEED TO KNOW

Under current state law, restrictive covenants are void in Colorado unless they fall within several narrow statutory exceptions, most notably the trade secrets exception. Under this exception, a company can enter into certain restrictive covenants with employees as long as their purpose is to protect trade secrets, the scope of the restrictive covenant

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is reasonable, and certain annual compensation threshold requirements and other procedural requirements are met.

Special Rule for Physicians

But there is a special rule for physicians under current law. Even if a restrictive covenant meets one of the statutory exceptions, Colorado law does not allow agreements that prevent physicians from practicing medicine. Instead, the law permits only "damages-for-competition" clauses for physicians. In other words:

- A healthcare employer cannot prevent a physician from leaving and working for a competitor.
- But it could generally require that, if a physician were to do so, the physician would owe certain damages to the former employer (with some limited exceptions for patients with rare disorders).

But again, this special rule applies only to physicians. That means, under current state law, businesses generally can enter into restrictive covenants with other healthcare workers, provided the covenants otherwise meet the statutory requirements.

The New 2025 "Healthcare Provider" Exception

Under the 2025 amendments, restrictive covenants will be prohibited if they restrict "healthcare providers" from practicing in their field. "Healthcare providers" is defined by the new statute to specifically include those engaged in the licensed practice of medicine (including physician assistants), the practice of advanced practice registered nursing, the practice as a certified midwife, and the practice of dentistry.

The new statute also explicitly prohibits covenants restricting healthcare providers from disclosing to their patients:

- Where they will be practicing next;
- Their new professional contact information; or
- That they have a right to choose a healthcare provider.

The new statute eliminates old language allowing for recovery of damages relating to competition for physicians. Therefore, it appears that a liquidated damages provision for healthcare providers is no longer a viable alternative.

Unanswered Questions

Still, a few unanswered questions remain.

1. *Does the healthcare provider exception only prohibit restrictive covenants relating to the provision of healthcare in Colorado?*

Consider a physician who works primarily in Grand Junction but who also practices in Utah. They leave their employment to work exclusively in Utah for their subsequent employer. The statute provides that the healthcare provider exception applies to covenants restricting healthcare practice "in this state" – Colorado. Assuming the trade secrets exception applies and that a geographic scope including Utah is deemed reasonable, would a covenant prohibiting this physician from practicing in Utah be permissible? Would they be permitted to solicit or treat former Utah patients? While the statute facially prohibits restraints on healthcare practice in Colorado, unique factual intricacies could complicate this analysis. It is currently unclear how this law will ultimately be interpreted in fringe scenarios.

2. *What prohibitions constitute a restriction on healthcare practice?*

Under Section 5.5 of the new statute, employers cannot maintain covenants that "prohibit or materially restrict" healthcare providers from disclosing to former patients certain information (including the location of the provider's continuing practice, their new professional contact information, or that the patient has the right to choose a healthcare provider). However, this list is not exhaustive. Therefore, there remains an open question as to what other provisions might constitute a "prohibition" or a "material restriction" on the practice of healthcare.

WHAT BUSINESSES NEED TO KNOW ABOUT THE SALE-OF-BUSINESS EXCEPTION

Current law permits certain restrictive covenants entered into in relation to the purchase and sale of a business or the assets of a business. The 2025 statute expands upon this exception and adds an additional requirement for sales by certain minority shareholders.

The New Sale-of-Business Exception

- Under the new law, restrictive covenants will be permissible if they are related to the purchase and sale of (a) a business, (b) a direct or indirect ownership share in a business, or (c) all or substantially all of the assets of a business.

- Additionally, for certain minority owners, the new statute includes a new requirement that the temporal length of a restrictive covenant cannot exceed a certain number of years calculated by a prescribed formula.

- There is no such temporal limitation for sales by a majority owner, so the temporal restriction would likely be assessed under the existing "reasonableness" test.

- Regarding the calculation, the "total consideration" received by the individual from the sale of the business must be divided by the "average annualized cash compensation received by the individual from the business, including income received on account of their ownership interest during the preceding two years or during the period of time that the individual was affiliated with the business, whichever period of time is shorter." The length in years of the restrictive covenant cannot exceed the result of this equation.

To illustrate: a minority owner of a business had total compensation in 2026 of $200,000. In 2027, their total compensation was $300,000. On January 1, 2028, the business is sold, and the minority owner receives $1,000,000 in connection with that sale. Their average annualized compensation in the two years preceding the sale was $250,000. Therefore, if the purchasing company were to execute a non-competition agreement in connection with this sale, it could not exceed four years in length ($1,000,000/$250,000).

Unanswered Questions

Again, there are a few unanswered questions about this new law.

1. *Are restrictive covenants permissible under the sale-of-business exception with silent minority owners who did not receive any compensation during the two-year lookback period?*

Imagine a startup where an investor provided funding to a company and became a minority owner. Thereafter, they never worked for the company and never received a salary, distributions, or any other compensation because the company was unprofitable. The company is sold, and the minority owner receives $1,000,000 in connection with the sale. Can the purchasing company require them to execute a non-competition agreement or other restrictive covenant? The problem is that the minority owner never received any compensation during the two-year lookback period. In other words, the aforementioned equation would be unsolvable, as it would require dividing by zero ($1,000,000/$0). What length of restricted covenant would be permissible, if any? It is unclear how a court would evaluate this question.

2. *Does the length restriction apply to all putative restrictive covenants in connection with the sale of a business, or just traditional non-competition covenants and non-solicitation covenants?*

The statute explicitly provides that the legislature "intends to preserve existing state and federal case law in effect before the effective date of this act that defines what counts as a covenant not to compete that is prohibited by" the statute. Under existing Colorado case law, confidentiality agreements and "trade secret provisions" generally have not been considered to fall under the purview of the statute. However, section 3(b) of the statute provides that "a reasonable confidentiality provision or trade secret provision relevant to the employer's business that does not prohibit disclosure" of certain information is not prohibited by the statute. Section 4(a) then provides that any restrictive covenant "that is otherwise permissible under subsection (2) or (3)" is void unless certain procedural requirements are met, such as timely delivery of separate notice to the affected worker. This begs the question of whether all, some, or no confidentiality or "trade secret provisions" constitute a "covenant not to compete" under this statute. To date, no court has answered that question.

To the extent some or all confidentiality or "trade secret provisions" are deemed to constitute covenants not to compete covered by the statute, would such covenants executed with minority shareholders relating to the sale of a business also be limited in temporal scope? Commonly, confidentiality and trade secret provisions are indefinite; *i.e.*, they generally last so long as the information remains confidential. If these provisions were held to be limited by the temporal scope limitation in section 3(c) of the new statute, that could present significant obstacles for purchasing parties.

WHAT TO DO TO PREPARE?

This new law is not retroactive, so it will not affect any restrictive covenants executed prior to August 6, 2025.

- To the extent that you already have healthcare provider employees subject to valid restrictive covenants under prior versions of this statute, you likely will want to ensure that they maintain their grandfathered-in status.

- If you have healthcare provider employees that are not currently covered by a valid restrictive covenant agreement, and you want to execute restrictive covenant agreements with them, you should evaluate whether it would be beneficial to your business to execute such agreements prior to the August 6 effective date of the new statute.

- Likewise, if you are contemplating the sale of your business (with closing after August 6), you should evaluate the extent to which key employees are currently covered by restrictive covenants or might need to be covered in the future in connection with the sale.

- If those employees are not presently covered by restrictive covenants, you should evaluate whether having them executing restrictive covenant agreements before (rather than after) the August 6 effective date would be more valuable to your business and any putative buyer.

- You should also evaluate whether you should adjust the present compensation of any individuals that may need to sign restrictive covenant agreements with a putative buyer to ensure that the buyer can expect that its interests will be reasonably protected in the event of a sale. If the buyer cannot effectively protect its interests, that could diminish the value of your business in a putative sale or could wholly preclude a sale from proceeding.

CONCLUSION

As you can see, the new restrictive covenant statute is not as simple as it might appear at first glance. Businesses need to be deliberate in their strategy to ensure compliance with this ambiguous new statute.