Nevada Bans Noncompetition Agreements for Hourly Workers

Insights
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Nevada recently joined the ranks of other states that have enacted legislation restricting noncompetition agreements for hourly employees. If you use a non-compete agreement in Nevada for all of your workers – including hourly workers – it is critical that you begin phasing out non-competes for your hourly workers. The new law takes effect on October 1 – what do you need to know to come into compliance?

Nevada's Non-Compete Laws

The last few legislative sessions have ushered in significant changes to Nevada's noncompetition law. Although the Nevada Supreme Court has long recognized the legality of non-compete agreements, Nevada enacted a 2017 statute which placed restrictions upon noncompetition agreements. In particular, NRS 613.195 provides that a noncompetition agreement is void and unenforceable unless it meets the following requirements:

- It must be supported by valuable consideration;
- It does not impose restraints that are greater than are required to protect the employer;
- It does not impose an undue hardship on the employee; and
- It imposes restrictions that are appropriate in relation to the consideration supporting the non-compete.

Employers are also prohibited from restricting a former employee from providing services to a former customer or client if the employee did not solicit former customers or clients, the customers and clients voluntarily choose to leave, and the former employee generally complies with the noncompetition covenant. Non-compete agreements that unnecessarily restrict a former employee from providing such services to former customers or clients are void and unenforceable. urther, if an employer terminates an employee due to a reduction of force, reorganization, or similar restructuring, a non-competition agreement is only enforceable during the time when the employer is paying the salary, benefits, compensation, or severance to the employee.

Importantly, Nevada's law allows for a court to "blue-pencil" or revise a non-compete if the agreement is supported by valuable consideration but the limitations on time, geographical area, or scope of activity are unreasonable. The Nevada Supreme Court recently confirmed that non-

competition agreements that specifically provide for a court to "blue-pencil" unreasonable restrictions are enforceable.

Overview of the New Law

On May 25, Governor Steve Sisolak signed Assembly Bill 47 into law, which, among other things, significantly revamps Nevada's restrictions on noncompetition agreements. Under AB 47, which is effective October 1, 2021, a non-compete agreement may no longer apply to an employee who is paid solely on an hourly wage basis, exclusive of any tips or gratuities. AB 47 also precludes employers from filing actions to restrict a former employee from working for a prior customer or client if the employee did not solicit former customers or clients, the customers and clients voluntarily chose to leave, and the former employee generally complies with the noncompetition covenant.

Importantly, AB 47 now allows employees to recover attorneys' fees and costs if the employee challenges a noncompetition covenant or an employer seeks to enforce a noncompetition covenant that applies to either an employee paid on an hourly basis or an employer impermissibly restricts the former employee from providing services to a former client or customer.

What does AB 47 Leave the Same?

Fortunately, the revisions to NRS 613.195 do not take away a court's ability to revise, or "blue-pencil," an otherwise enforceable noncompetition covenant on the basis that certain limitations are unreasonable. The legislature's decision to keep the "blue-pencil" provision in NRS 613.195 allows employers the ability to enforce noncompete agreements against salaried employees, and provides courts with some latitude to impose reasonable limitations on a former employee.

Takeaways for Employers

The passage of AB 47 signals Nevada's alignment with a growing number of states that have significantly restricted the use of noncompetition agreements for "low wage" employees. Before AB 47 becomes effective on October 1, you should be proactive by identifying hourly employees that have signed a noncompetition agreement that may now be unenforceable, revising any language in the noncompetition agreements that conflict with the new law, and eliminating noncompetition covenants from any future offers of employment to hourly employees.

We also generally recommend that you review your non-compete agreements to ensure they meet the requirements of NRS 613.195 and do not contain overbroad language or unreasonable restrictions. You should also be more cautious when pursuing enforcement of a noncompetition agreement given the potential attorneys' fees and costs if the employee prevails.

Fisher Phillips will continue to monitor employment developments in Nevada and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-

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