



Fisher Phillips Partner Testifies on Legislation Limiting Non-Competes and Other Restrictive Covenants in Colorado

MIKE GRECO APPEARED BEFORE HOUSE AND SENATE COMMITTEES TO WEIGH-IN ON HB 22-1317

News

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Mike Greco, Regional Managing Partner of Fisher Phillips' Denver office, testified yesterday before the Colorado Senate Business, Labor & Technology Committee about HB 22-1317, which is pending legislation that would significantly limit the circumstances under which restrictive covenants may be used in Colorado. The legislation passed the House on April 18th and is now on the verge of being passed by the Senate. If no further changes are made, it will bring a virtual end to non-competes in Colorado with serious consequences for non-compliance.

Greco's testimony before the Senate comes on the heels of his April 6, 2022 testimony before the Colorado House Judiciary Committee. During both sets of testimony, he urged lawmakers to give careful attention to the impact the legislation will have on customer non-solicitation agreements intended to protect employers' trade secrets.

The proposed legislation would no longer allow for employers to use non-competes, including non-solicitation agreements, for employees earning less than \$101,250 a year in 2022. In his testimony, Greco emphasized that employers often use non-solicitation agreements to protect trade secrets, and he explained that "a secret is a secret," and a "highly compensated employee can compromise a secret, and so can a non-highly compensated employee." Thus, he urged the House and Senate to amend the bill to allow employers to use non-solicitation agreements to protect trade secrets without regard to the level of wages earned by workers.

Greco pointed to ten other states in the country that currently have statutes limiting the use of non-competes for low wage earners. In his House testimony, he noted that "of these ten states, at least eight of them still allow non-solicitation agreements without regard to the level of wages earned by workers." Thus, Greco is urging Colorado lawmakers to follow suit and allow non-solicitation agreements without a wage threshold. And, if they end up deciding a wage threshold is required, Greco asked lawmakers to at least consider lowering it with respect to non-solicitation agreements only.

Yesterday, the Senate Committee voted to advance the legislation to the full Senate, but noted they would continue to consider the issues addressed by Greco. If the legislation is passed as currently written, Governor Polis will likely sign it, and it will become effective in early August 2022. All

restrictive covenants drafted after the effective date – including non-competes, non-solicitation agreements, and similar variations – will be void unless they meet the statutory requirements. At this point, employers will face serious consequences for non-compliance – including a \$5,000 penalty per employee if they enter into, attempt to enforce, or present to current or prospective workers any non-compete that is void under the new statute. In addition to actual damages and penalties, workers and prospective workers may obtain injunctive relief and recover reasonable attorneys' fees and costs. The Attorney General is likewise authorized to sue for relief under the statute.

Greco has litigated non-compete cases in nearly all fifty states, including dozens of states that have non-compete statutes in place. Thus, in addition to his testimony, he will continue to monitor this legislation and will stand ready to advise employers on how they can prepare for this dramatic change to the non-compete landscape.

Click [here](#) to listen to Greco's April 6, 2022 testimony before the House.

Click [here](#) to listen to Greco's April 27, 2022 testimony before the Senate.

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