

MINNESOTA TO BAN NON-COMPETE AGREEMENTS: THE 10 THINGS EMPLOYERS NEED TO KNOW

Insights
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Minnesota is poised to become the fourth state – together with California, North Dakota, and Oklahoma – to enact a near-total ban on the use of non-compete restrictive covenants. The Minnesota legislature passed an omnibus spending bill on May 16 including the ban that the Governor is expected to sign in the coming days. **[Ed. Note: The Governor signed this bill on May 24, and it will take effect on July 1.]** It actually goes beyond the restrictions commonly contained in other states' non-compete statutes by extending protections to independent contractors, and is also not limited by any income threshold. Not to be overlooked, the bill prohibits out-of-state employers from adjudicating their employment agreements in their preferred state or under their preferred state's laws. What are the 10 things employers need to know about this significant development?

- 1. Bill Contains Sweeping Non-Compete Prohibition:** [Minnesota's SF 3035](#) prohibits employers from requiring employees to sign agreements that contain non-compete provisions as of July 1. The term "non-compete" is defined to include restricting an employee (or independent contractor) from performing work for another employer for a specified period of time, in a specified geographical area, or in a capacity that is similar to the employee's work for the employer.
- 2. There are Some Exclusions:** As in California, Minnesota's new law will permit non-compete provisions in the context of the sale of a business or dissolution of a

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business so long as the provision was agreed to by key individuals involved in selling or dissolving the business, limits the restriction to a similar type of business, and remains within a reasonable geographic area for a reasonable length of time.

3. **It's Limited to "Non-Competes":** Worth noting is the fact that the ban does not include non-disclosure agreements, agreements designed to protect trade secrets, or agreements designed to protect confidential information. Nor does the ban include non-solicitation agreements, agreements restricting the ability to use client or contact lists or to solicit customers upon leaving employment.
4. **There's a Broad Severability Provision:** One seemingly generous provision says that the presence of an unenforceable non-compete provision will not render the entire agreement unenforceable. The bill makes clear that the balance of an otherwise enforceable agreement will remain unaffected.
5. **But There are Also Broad Remedies:** However, Minnesota's new law will explicitly permit recovery of attorneys' fees when employees or independent contractors enforce their rights under the law.
6. **Venue/Choice of Law Provisions Will Not Be Allowed:** Employers may not avoid application of the law by including a choice of law provision that favors the law of another state, or by requiring an employee who primarily resides and works in Minnesota to adjudicate a claim outside Minnesota. This component of the law applies to all agreements between an employer and an employee. As noted above, the term "employee" includes independent contractors. This means that even employers who do not use non-compete provisions will need to ensure their agreements do not include non-Minnesota venue/forum or choice of law provisions.
7. **There Will Be No Impact on Existing Agreements:** Fortunately, the law is not retroactive, meaning existing non-compete agreements are excluded. The law applies only to non-compete agreements entered into *on or after* the effective date of the law, July 1, 2023.
8. **You Should Review Your Agreements:** You should use the next month to look over both your employee and independent contractor agreements to determine



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whether they contain non-compete provisions or forum selection/choice of law provisions in favor of states other than Minnesota. Once identified, you should create a catalogue of those documents, with location, version, and employee key attributes to ease transition to compliant documents. The following is an inexhaustive list of typical documents subject to the law:

- Employment Agreements
- Consulting Agreements
- Non-Disclosure Agreements
- Confidentiality Agreements
- Severance Agreements
- Buy-Sell Agreements
- Stock Award Agreements
- Long-Term Incentive Plan Documents
- Employee Handbooks

9. Work With Your Legal Counsel: In advance of the July 1 effective date, you should work with legal counsel to ensure each document type that previously contained non-compete provisions or non-Minnesota forum/choice of law provisions is revised to comply with the law.

10. Beef Up Your Other Agreements: Finally, you should review your other forms of restrictive covenants that will be permitted under Minnesota law (e.g. customer non-solicitation, employee non-recruiting, confidentiality, trade secret non-disclosure) to ensure they are robust and provide you with sufficient and appropriate protections for the particular circumstance (nature of the position, protectible interests, protected information).

Conclusion

We will continue to monitor this situation and provide updates, as necessary. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox. For further information, contact your Fisher Phillips attorney, the authors of this

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