

MINNESOTA STAFFING AGENCIES CAN NO LONGER BLOCK WORKERS FROM BEING HIRED AT CLIENT COMPANIES: 5 THINGS YOU SHOULD KNOW

Insights
May 24, 2024

Minnesota businesses, including staffing agencies, will no longer be able to enter into contracts that restrict their customers from hiring workers placed at their jobsites thanks to a new law taking effect on July 1. But the practice of imposing conversion fees on client companies that hire workers is not explicitly banned under the law, leading many to think the common practice can continue. The new law signed into effect by Governor Walz on May 17 will also require staffing agencies to send notices to those workers subject to existing restrictions that will soon be void. Here are five things you need to know about Minnesota's new law – and a gameplan for coming into compliance.

Overview of New Law

[Last year, Minnesota enacted legislation that prohibited noncompete clauses in most employment contracts.](#)

However, in an effort to address a perceived loophole in the law, state lawmakers recently passed [an omnibus labor bill](#) to bar so-called "shadow" noncompete clauses. These clauses exist in contracts not with individual workers, but between businesses.

Specifically, the new law bans most contract provisions that restrict customers of "service providers" – including staffing companies – from doing anything to "restrict, restrain, or prohibit" the hiring of a service providers' employees or independent contractors.

5 Things to Know

Related People



Jonathan Crook

Partner

[704.334.9313](tel:704.334.9313)



Benjamin M. Ebbink

Partner

[916.210.0400](tel:916.210.0400)

1. **Broad Prohibition.** Staffing agencies and other businesses may no longer restrict, restrain, or prohibit in any way a customer from directly or indirectly soliciting or hiring one of their employees or independent contractors.
2. **Applies to Current Contracts.** The law makes clear that any provision of an existing contract that violates this new restriction is void and unenforceable.
3. **You Must Prepare Notices.** If you have existing contracts with provisions that now violate this new law, you must provide notice to your workers about the change and that the existing restrictive covenant is now void and unenforceable.
4. **Limited Exceptions.** The law will not apply to workers providing professional business consulting for computer software development and related services who are placed through a staffing agency with the knowledge and intent of being considered for a permanent position with the customer at a later date.
5. **What About Conversion Fees?** Many in the industry feel comfortable that staffing companies will still be able to charge conversion fees to client companies when workers are hired by that company, a common practice to recoup onboarding or training expenses. That's because conversion fees are not explicitly barred by the law's language, and the "restrict, restrain, or prohibit" language may not extend that far. There may be a risk here, however, as enterprising attorneys might convince Minnesota courts that certain conversion fees could be analogous to forfeiture-for-competition provisions, which they have traditionally treated as non-compete restrictions. You should consult with your counsel to review the language contained in your conversion fee agreements to get an individualized risk assessment.

What Should You Do?

The new law takes effect in just a few weeks – on July 1. Staffing agencies with operations in Minnesota have only a very short time to prepare for this new law. Over the next month, you should do the following:

- Work with your legal counsel to revise any existing restrictive covenants you have that may be implicated by this new law



Michael P. Elkon

Partner

404.240.5849

Service Focus

Employee Defection and Trade Secrets

Industry Focus

Staffing

- Spend the next month developing a full inventory of workers who have existing restrictions in place
- Prepare notices to send out to all of those workers to provide the proper notice
- Talk with your lawyer about any existing conversion fee agreements you have in place to determine your risk

FP's New Resource Can Help: Introducing Blue Pencil Box.

To stay up to speed on changes like this cropping up in states across the country, check out one of FP's latest resources – [Blue Pencil Box](#). This comprehensive resource not only provides detailed daily summaries of cases and laws involving non-competes and other restrictive covenants, but also maintains a comprehensive database and customizable checklists to help you comply.

Conclusion

We will continue to monitor this situation and provide updates as warranted, so you should ensure you are subscribed to [Fisher Phillips' Insight System](#) to gather the most up-to-date information directly to your inbox. If you have questions, please contact the authors of this Insight, your Fisher Phillips attorney, any attorney in our [Employee Defection and Trade Secrets Practice Group](#), or any attorney in [our Minneapolis office](#).