New Law Voids Most Wyoming Non-Compete Agreements: Key Takeaways for Employers

Insights
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Employers who do business in Wyoming will soon face broad restrictions on their ability to enter into and enforce non-compete agreements with employees thanks to a new law passed last month and set to take effect on July 1. This development is a major shift for Wyoming, where courts have historically permitted non-compete agreements to the extent reasonable in duration and geographic scope. Employers that rely on restrictive covenants to protect their business interests will want to get up to speed on the new law – and some unanswered questions still left to navigate.

Overview of New Wyoming Non-Compete Law

With four exceptions, the new Wyoming law voids "any covenant not to compete that restricts the right of any person to receive compensation for performance of skilled or unskilled labor." The four exceptions are:

- Where a non-compete clause is part of a contract for the purchase and sale of a business, or the assets of a business;
- Where a non-compete clause provides for the protection of trade secrets (as defined by Wyoming law);
- Contractual provisions that provide for the recovery of all or a portion of the cost of relocating, educating, and training an employee, with the percentage of expense recovery based upon the amount of time an employee has served; and
- For executive and management personnel and officers and employees who are professional staff to executive and management personnel.

Moreover, the law eliminates restrictions on physicians to freely practice medicine. Non-compete covenants in employment, partnership, or corporate agreements between physicians will be void and will allow for physicians to notify patients with "rare disorders" of their continued availability to practice and their updated professional contact information.

The new restrictions apply only to contracts entered into on or after July 1, 2025.

Comparison to Colorado's Non-Compete Statute

As Wyoming's new non-compete statute has yet to go into effect, there is no judicial guidance about how the law will be interpreted or applied. However, several provisions closely mirror language found in Colorado's prior non-compete statute, before Colorado's 2022 overhaul. As a result, Colorado case law interpreting the prior version of its non-compete statute may offer helpful insights to Wyoming employers – though it should be used cautiously and with the understanding that Wyoming courts are not bound to reach the same conclusions.

One provision of the Wyoming law that will likely be of interest to many employers is the exception for executive and management personnel, as well as their professional staff. Like the prior version of Colorado's non-compete law, it uses undefined terms such as "executive," "management," and "professional staff."

Given this similarity, it's possible that Wyoming courts may look to how Colorado courts have interpreted these terms. Colorado courts considered several factors when determining whether an employee qualified as executive or manager, including:

- whether an employee is "in charge" and worked in an unsupervised capacity;
- the employee's level of skill, expertise, and independence, rather than customer-facing functions; knowledge, and autonomy of an employee, rather than relationships with customers;
- the actual job responsibilities, rather than formal job titles; and
- whether an employee had authority over hiring or firing.

Colorado courts also interpreted "professional staff" to include key employees who worked closely with executives and played a meaningful role in implementing executive or management-level functions – even if they did not hold formal management titles themselves.

Another similarity between the statutes is that both apply broadly to "any person," which suggests that the Wyoming law, like Colorado's prior statute, does not distinguish between employees and independent contractors for purposes of enforceability.

Unanswered Questions

Besides the meaning of the undefined "executive," "management," and "professional staff" terms, Wyoming's new statute leaves several other questions unanswered:

1. What is and is not a "covenant not to compete?" Traditional non-compete restrictions obviously will fall under this definition. What is not clear, however, is whether other common forms of restrictive covenants will likewise be interpreted to constitute "covenants not to compete." For instance, will customer non-solicitation covenants fall into this definition? Employee non-solicitation covenants? Broad confidentiality agreements? "Anti-moonlighting" agreements (prohibitions against working for another company during the term of employee's employment)?

2. What time controls for analyzing applicability of the statutory exceptions? For instance, do the managerial or trade secrets exceptions need to be met at the time of contract formation? At the time of breach (if breach occurs during the course of employment)? At the time of separation of employment (if breach occurs post-separation)? At *both* the time of execution *and* the time of separation of employment?

3. Does the sale-of-business exception apply to franchisors/franchisees? Given that franchisors are merely licensing the brand of the franchise, rather than selling the business, do franchisor/franchisee relationships automatically meet the sale-of-business exception? Or will franchisors seeking to protect their interests need to satisfy other exceptions to enforce non-compete agreements?

4. How will supervised employees "count" toward meeting the managerial exception? For example, under the federal Fair Labor Standards Act, the managerial exemption requires that an employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent. A variety of courts have held that, for purposes of meeting the FLSA's managerial exemption, multiple putative managers cannot claim to supervise the same non-managerial employee; the non-managerial employee can only "count" toward one putative managerial employee. To illustrate, imagine Employees A and B co-manage a small department where they jointly supervise Employees C, D, and E. Under the FLSA's managerial exemption, Employee C could count toward exemption for Employee A, and Employee D could count toward exemption for Employee B, but Employee E could only count toward exemption for *either* Employee A or B, not both. Therefore, it is unclear whether Wyoming's non-compete law require supervision of multiple employees to qualify as "management," and, if so, how that will be assessed.

Takeaways for Employers

Wyoming employers should take proactive steps to ensure compliance and protect their business interests before the new non-compete statute goes into effect on July 1, 2025.

- Work with **experienced employment attorneys** – particularly those familiar with Colorado's prior version of its non-compete statute, which closely resembles Wyoming's new law. This background can help anticipate interpretive trends and provide practical guidance.
- Note that you can still rely on non-compete agreements executed before the new law takes effect, so it is important to **review existing agreements** to determine whether they can be renewed or amended under their current terms without requiring entry into a wholly new agreement.
- Additionally, after Wyoming's new law goes into effect, be careful before deciding to **re-execute or modify existing non-compete agreements** with your employees that have been "grandfathered in," as doing so may bring the amended agreements under the scope of the new statute.

- You should also **identify which of your employees may fall under the "executive and management personnel" exception**. This analysis should focus on actual job responsibilities – not just job titles. Where appropriate, you may want to restructure or clarify roles and responsibilities to strengthen their position under this exception, including updating job descriptions.
- The new law also preserves employers' abilities to protect trade secrets. It is good practice to periodically **review and audit policies meant to safeguard trade secrets**, and the implementation of the new Wyoming law offers a prudent reason to do so.

Unlike Colorado's current statute, Wyoming's law does not impose statutory penalties for unenforceable non-compete restrictions, nor does it require formal notice to employees before entering into permissible restrictive covenants. This distinction certainly offers some relief, but employers should still work with counsel to exercise caution and diligence in drafting and enforcing restrictions.

Conclusion

Wyoming's sweeping prohibition marks a clear departure from the state's previous permissive approach to non-compete agreements. You should treat this shift as a compliance priority. If you have questions, please contact the authors of this Insight, your Fisher Phillips attorney, any attorney in our Denver office, or any attorney in our Employee Defection and Trade Secrets Practice Group.

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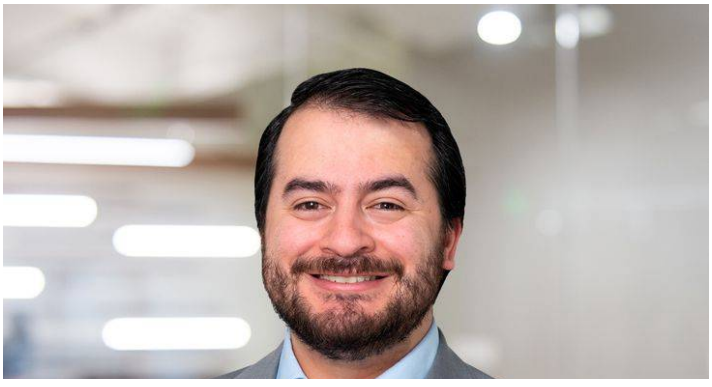

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