



HB 2992: Oregon's Most Recent Attempt to Rein in Restrictive Covenants

Insights

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In 2016, the White House issued a [report](#) that expressed a call to action for noncompetition reform at the state legislative level throughout our nation. Since then, many states have tinkered with their noncompetition laws in an attempt to narrowly define when and under what circumstances an employer can subject an employee to a noncompetition agreement. For example, less than a month ago Washington State enacted a law that significantly restricts noncompetition agreements with employees and independent contractors. A full summary of the new Washington law and restrictions can be found [here](#).

Not to be outdone by Washington state, Oregon Governor Kate Brown signed HB 2992, which starting January 1, 2020 adds another hurdle for Oregon employers seeking to maintain an enforceable noncompetition agreement. The bill requires that “within 30 days after the date of the termination of the employee’s employment, the employer provides a signed, written copy of the terms of the noncompetition agreement to the employee.” ORS 653.295(1)(e). As written, it is unclear whether it is satisfactory to provide a copy of the agreement to the former employee on the date their employment ended, or if the agreement must be provided (at the earliest) the day after the date of their termination. We will continue to monitor the Oregon Administrative Rules for clarity on this requirement. Regardless, the one thing that is clear is that an employer does not satisfy this requirement if they provide the employee with the agreement prior to the employee’s last day.

This bill passed unanimously in both the Oregon House and the Senate. Unlike Washington state, whose recent law is aimed at limiting noncompetition agreements, the Oregon legislature believed this amendment may help facilitate the underlying goal of said agreements. It reasoned that employees likely lose or misplace their copy of the agreement at some time during their employment, which limits the employee’s ability to comply with the agreement. The legislature intended the post-employment notice as a way to remind former employees of their noncompetition obligations.

In summary, HB 2992 means that starting January 1, 2020, employers must comply with [all](#) of the following to have an enforceable non-competition agreement under Oregon law:

- The employer tells the employee in a written job offer at least two weeks before the employee starts work that the noncompete is required, or the noncompete is entered into upon a bona fide advancement.

advancement;

- The employee is exempt from Oregon minimum wage and overtime laws;
- The employer has a “protectable interest” (access to trade secrets or competitively sensitive confidential information);
- The employee makes more than the median family income for a family of four as calculated by the Census Bureau;
- The agreement is not effective for longer than 18 months from the date of the employee’s termination; and
- The employer provides the former employee with a signed, written copy of the noncompetition agreement within 30 days after the date of employment termination.

Next Steps

You should take a look at existing noncompete agreements and develop a strategy for existing and new employees moving forward to ensure compliance with the law. You should also put into place a system that ensures noncompetition agreements are sent to the former employee within 30 days after their employment ends.

It is important to remember that the aforementioned obligations are only associated with noncompetition agreements. It is possible that your company may be better off with customer non-solicitation or non-transaction agreements where the employee is restricted from soliciting or doing business with customers with whom they had material contact during their employment. These agreements are not subject to the same restrictions as noncompetition agreements and present less of an administrative burden on your company.

For more information about how this new law could affect your workplace and the differences between a noncompetition agreement and a non-solicitation or non-transaction agreement, please contact your Fisher Phillips attorney.

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