

VIRGINIA TAKES ANOTHER STEP TO RESTRICT NON-COMPETES: A 5-STEP ACTION PLAN FOR EMPLOYERS

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Virginia Takes Another Step to Restrict Non-Competes: A 5-Step Action Plan for Employers

Employers in Virginia should be aware of legislation that would make it even harder to enforce non-competes. This is the latest in a series of moves curbing such agreements in the state. Specifically, the Virginia House of Representatives passed a bill on March 4 that would limit an employer's ability to enforce a non-compete agreement against laid off or fired employees, unless the termination is "for-cause." The bill, which also passed the state Senate in early February, is now headed to Governor Abigail Spanberger – and we expect her to sign it into law. Here's what employers in Virginia need to know and a five-step action plan for compliance.

New Limit on Enforceability

If signed into law, SB 170 will void employee non-competes for workers who are laid off without severance or other compensation. According to the bill, this will apply to all involuntary terminations, except in "for-cause" terminations. These restrictions would apply to all non-compete agreements signed on or after July 1, 2026.

Many employers incorporate non-compete agreements into their new hire process for certain employees, but they may not provide severance if the employee is terminated. Under the new law, non-competes that were entered into pre-hire

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or during employment will not be enforceable against the terminated employee unless they receive severance or other compensation.

The amount of severance that will constitute adequate consideration is not defined, and it remains to be seen how courts will deal with that question. Employers who are concerned about employee competition must therefore weigh the benefits of providing a severance to preserve their rights under a non-compete agreement.

Employers should also consider strengthening language related to “for-cause” terminations and including such language in non-compete agreements. While the bill allows for enforcement of non-competes against employees that are terminated “for-cause,” what constitutes a “for-cause” termination is not defined.

Tracking the Trend in Virginia

This is the latest in a series of moves in Virginia to limit non-competes. As we [previously reported](#), a recent ruling from Court of Appeals of Virginia expanded the commonwealth’s non-compete ban for certain employees to include some non-solicitation agreements.

This decision came on the heels of [a legislative amendment to the statute](#) that expanded the ban from “low wage” employees to any employee who is non-exempt under the Fair Labor Standards Act. With a Democratic governor, and a Democratic-held legislature, additional restrictions may be coming.

Your 5-Step Action Plan

Employers should consider taking the following steps to ensure compliance with the expanded ban on non-competes and prepare for SB 170, if it is signed into law:

1. Review All Restrictive Covenant Agreements

Audit all employment agreements, offer letters, and standalone restrictive covenant documents. Specifically identify any non-compete or non-solicitation clauses. Ensure they comply with evolving state laws, including the latest amendments and court rulings applying to lower-wage earners and non-exempt employees.

2. Prepare Updated Language

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If the new bill becomes law, consider including specific language in your non-compete agreements defining what will be considered a “for-cause” termination. This may help you enforce the agreement later on. Work with legal counsel to create updated agreements, as well as a plan for rolling them out.

3. Update Policies and Train Managers

Update internal policies and templates to ensure ongoing compliance with evolving laws on non-compete and non-solicitation agreements. Be sure your HR department and hiring managers are aware of new requirements and know how to comply.

4. Curtail Unlawful Enforcement Actions

Do not threaten to enforce, attempt to, or actually enforce a prohibited non-compete or employee non-solicitation provision. Again, it’s a good idea to reach out to your attorney to ensure compliance considering the changing legal landscape.

Conclusion

We will continue to monitor developments in Virginia throughout 2026, so make sure you are subscribed to [Fisher Phillips’ Insight System](#) to get the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any of our [Virginia-licensed attorneys](#) or attorneys in our [Employee Defection and Trade Secrets Practice Group](#).