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May Tip of the Month: Legislation Limiting Employers' Use of Restrictive Covenants

Adding to a growing list that already includes Massachusetts, D.C., California, and Illinois, in May 2022, several more states took steps to enact legislation to limit employers' ability to use non-compete and other restrictive covenants. For example, in Colorado, a bill was passed that voids most non-compete agreements unless the agreement: (1) is with a "highly compensated" worker; (2) is for the protection of trade secrets; and (3) is no broader than reasonably necessary to protect the employer's legitimate interest in protecting the trade secrets. If signed by the governor, the law would become effective in August 2022. Similarly, in New Jersey, bills are progressing through the legislature that would strictly limit restrictive covenant terms to specific time periods and geographical locations, and prohibit non-compete enforcement against certain groups of employees, including short-term employees. Similar bills are under consideration in Connecticut and New York. Employers that utilize restrictive covenants should carefully review the details of such agreements in order to ensure that they comply with applicable law and account for likely forthcoming developments.

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