



On May 24, 2023, the state of Minnesota enacted a labor bill (SF 3035) that prohibits employers' use of noncompetes, effective July 1, 2023. The ban does not apply retroactively to noncompetes signed prior to July 1, 2023.

Definition of Noncompete

Minnesota defines a noncompete as an agreement that restricts a former employee's ability to:

- Work for another employer for a specified period of time.
- Work in a specified geographical area.
- Work for another employer in a capacity similar to the employee's work for the employer that is party to the agreement.

The definition only encompasses restrictions that limit an employee's activities after the termination of employment. As a result, the new law does not prohibit restrictions that limit current employee activities.

Notably, the definition also excludes agreements intended to protect trade secrets or confidential information. Minnesota also specifically excludes nonsolicit agreements and agreements restricting former employees' ability to use client lists.

Prohibited Language

Under Minnesota's new law, noncompete agreements executed after July 1, 2023, are void and unenforceable. However, the law allows noncompetes in conjunction with the sale of a business that prohibit the seller of the business from engaging in a similar business within a reasonable geographic area for a reasonable length of time. Additionally, noncompetes are allowed in anticipation of a dissolution of a business.

The law also provides that employers cannot require an employee that primarily works and lives in Minnesota to agree to a venue or governing law outside of Minnesota.

Consequences

A former employee subject to an unenforceable noncompete can seek reasonable attorneys' fees and injunctive relief. Notwithstanding, the law will not void other valid provisions in an agreement due to the inclusion of an unenforceable noncompete or governing law section.

Takeaways

Several other states have either outright banned post-employment noncompetes or restricted noncompetes for workers below certain wage thresholds. Other state legislatures have debated restricting noncompetes, and we are likely to see additional restrictions in the near future.

The National Labor Relations Board (NLRB) has begun targeting noncompete provisions. Further, the Federal Trade Commission (FTC) has proposed a rule banning noncompete agreements.

As a result, employers may want to carefully review any noncompete and nonsolicit language used in their form documents, such as offer letters, separation agreements, and confidentiality agreements. Employers should also consider alternative strategies in states such as Minnesota that have stringent restrictions on noncompete language.

Employers should consult with counsel prior to using aggressive noncompete or nonsolicit language or when determining whether to enforce a noncompete clause.

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