

Colorado's New Non-Compete Law Signed by Governor, Will Go into Effect on August 10, 2022

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Colorado Governor Jared Polis signed [HB 22-1317](#) into law on June 8, 2022. The new law significantly limits the enforceability of non-compete agreements executed after August 10, 2022 — the law's effective date — for employers with employees working or living in Colorado.

(For details of the new law, see our article, [Colorado Poised to Further Limit Use of Non-Compete Agreements, Raise Penalties for Non-Compliance.](#))

Here are several questions and answers for employers to consider before the law becomes effective:

Q: Before the August 10 effective date, should employers execute *new* non-compete agreements with employees who currently do not have non-compete agreements?

A: The new non-compete law is *not* retroactive, *i.e.*, the enforceability of any existing non-compete agreements, or non-compete agreements that are executed prior to August 10, will be assessed by the current, more relaxed standard. Some employers may decide to avail themselves of current law and expedite the non-compete execution process with employees not currently subject to such restrictions. Employers should take care to review their agreements to ensure that the restrictions are enforceable under current Colorado law.

Q: How should employers handle *existing* non-compete agreements with employees?

A: Non-compete agreements that were executed before August 10 will not be affected by the new statute. Employers should review the language of existing non-compete agreements to ensure that they do not require modification. If they need to be modified, employers might consider making such revisions prior to the effective date of the new law.

Similarly, with respect to employees who are promoted or who otherwise transition to new roles after August 10, employers might consider having any newly executed employment agreements not supersede or void existing non-compete agreements.

Q: Should employers revise standard language currently used in their non-compete agreements for agreements executed on or after August 10?

A: Because the new statute imposes potentially heavy penalties on employers who violate the statute — including fines of up to \$5,000 for attempting to enforce or even present to an employee a non-compete that is later deemed “void” — employers should review their agreements for compliance with the new statute. Among other issues, employers should be mindful of the new law's notice requirement.

Additionally, to qualify for certain statutory exceptions, the new law requires that employees meet compensation thresholds at the time of signing *and* at the time of enforcement. For example, where the non-compete agreement is designed to protect trade secrets, to qualify

for the “highly compensated employee” exception, an employee must earn annual compensation of at least \$101,250. For provisions dealing with non-solicitation of customers, the minimum annual compensation threshold is \$60,750. Failure to meet these annual compensation thresholds will render the agreements *void*.

While the compensation threshold issue may be fairly straightforward for most salaried employees, it may be more difficult for employees who might reach those thresholds based on future commissions or bonuses of as-yet-undetermined amounts. In light of the substantial statutory penalties for executing a void non-compete agreement, employers should assess compensation levels carefully.

The Takeaway

Colorado’s new non-compete statute presents some difficult compliance challenges for employers. To best ensure that you are prepared for these changes, please contact the Jackson Lewis attorney(s) with whom you regularly work or one of the authors of this article.

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