

Legal Update Article

Minnesota to Ban Non-Compete Agreements Other Than Related to Sale, Dissolution of Business

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Related Services

Restrictive Covenants, Trade
Secrets and Unfair Competition

Minnesota is close to enacting a near-total bar on the use of covenants not to compete. The Minnesota Legislature released a Conference Committee Report on the bill (MN SF 3035), which reflects the bill's likely final form, on May 16, 2023.

The new law is to take effect July 1, 2023, and it will apply to contracts and agreements entered into on or after that date.

Covenants Not to Compete Void in Employment Agreements

The new law will render void and unenforceable any non-compete agreement with an employee or independent contractor, unless the non-compete agreement was (1) agreed to by partners, members, or shareholders selling or dissolving a business and (2) restricts them from carrying on a similar business (3) within a reasonable geographic area and for a reasonable length of time.

The law expressly provides, however, that it only renders void and unenforceable non-compete covenants; the balance of an otherwise enforceable contract or agreement is not affected.

Non-Disclosure, Confidentiality, Non-Solicitation Agreements Unaffected

Significantly, the definition of non-compete expressly excludes non-disclosure agreements, agreements designed to protect trade secrets, agreements to protect confidential information, agreements restricting the ability to use client or contact lists, and non-solicitation agreements.

Choice of Law, Venue for Disputes

The new law contains choice-of-law and venue provisions prohibiting an employer from requiring an employee who primarily resides and works in Minnesota, as condition of employment, to agree to a provision that would require a claim or controversy arising in Minnesota: (1) to be adjudicated (including litigation and arbitration) outside of Minnesota; or (2) which deprives the employee of the substantive protections of Minnesota law.

Recovery of Attorneys' Fees

In addition to injunctive relief and other remedies, the new law will allow a court to award reasonable attorneys' fees to an *employee* who sues to enforce the employee's rights under the law.

Implications

Employers should prepare for the new law to go into effect. Non-compete agreements entered into before July 1, 2023, are not affected by the new law. Judges being asked to enforce a non-compete agreement entered into *before* July 1, 2023, can take into account the new law's prohibitions in their decisions.

If you have any questions about non-competes and restrictive covenants, please contact the Jackson Lewis attorney with whom you regularly work.

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