

Maine Governor Vetoes Restrictions on Non-Competition Agreements

By Clifford R. Atlas, Erik J. Winton & Samuel H. Martin

April 2, 2024

Meet the Authors



Clifford R. Atlas

(He/Him)

Principal

(212) 545-4017

Clifford.Atlas@jacksonlewis.com



Erik J. Winton

Principal

(617) 367-0025

Erik.Winton@jacksonlewis.com



Samuel H. Martin

Maine Governor Janet Mills has vetoed legislation that would have severely restricted the contexts in which Maine employers could use and enforce non-compete agreements.

The bill, [LD 1496](#), would have significantly hampered Maine employers seeking to enter into non-competition agreements with their employees under most circumstances.

The bill would have allowed new non-competition agreements only to protect trade secrets or if the employee being restrained has an ownership interest in the employer. Moreover, trade secrets would have been an allowable interest only where alternate restrictive covenants (such as non-solicitation, non-disclosure, or confidentiality agreements) were insufficient to adequately protect the employer's interest. The bill would have applied to all non-compete agreements entered into on or after the effective date of the law.

Unchanged was the statutory definition of "noncompete agreement" the legislature put in place in the 2019 reforms. A non-compete agreement "means a contract or contract provision that prohibits an employee or prospective employee from working in the same or a similar profession or in a specified geographic area for a certain period of time following termination of employment."

The present effort followed significant reforms to the use of non-competition agreements in Maine under [2019 legislation](#). That legislation remains in force and is not impacted by the veto. Under that law, Maine employers may use non-competition agreements to protect trade secrets, confidential information (which does not qualify as a trade secret), and employer goodwill. Employers must disclose the agreements before an offer of employment and give employees at least three business days before requiring that an agreement be signed. Additionally, employees making at or below 400 percent of the federal poverty level (currently, \$60,240 a year) cannot enter into non-competition agreements. Civil penalties accompany violations of income level and disclosure requirements. The amendments of 2023 added a prohibition on non-competition agreements for veterinarians unless the veterinarian has an ownership interest in the facility. If it became law, LD 1496 would have left many of these provisions in place, including the notice requirements.

Governor Mills, a Democrat, enjoys Democratic majorities in both chambers of the Maine Legislature. Her veto of LD 1496 represents her first of 2024. The governor's [veto message](#) transmitted to the Legislature points to the 2019 reforms, which she signed into law, stating the Maine Department of Labor has received no complaints that suggested a need for further legislation and highlighting that no evidence was presented at the committee stage that suggested the 2019 law is inadequate or non-competition agreements are being abused in Maine.

Governor Mills called non-competition agreements a "critical tool" in preventing employees from taking unfair advantage of their former employers. Governor Mills pointed

Associate
603-559-2700
Samuel.Martin@jacksonlewis.com

Related Services

Restrictive Covenants, Trade
Secrets and Unfair Competition

to protection of confidential information as a legitimate employer interest that LD 1496 would have removed as a protectable interest under law. The governor also referenced opposition to the bill from Maine businesses large and small (including healthcare providers). Finally, Governor Mills noted that anticipated Federal Trade Commission rulemaking in the area would render it “ill-advised” for Maine to impose new state-level restrictions at this time.

The Maine Legislature will have the opportunity to consider the governor’s veto and can override it with a vote in support from two-thirds of members present in both the House of Representatives and the Senate. However, support for the bill did not exceed two-thirds of the members in either chamber on initial passage. A successful override of the veto appears unlikely.

Please contact a Jackson Lewis attorney with any questions.

©2024 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on employment and labor law since 1958, Jackson Lewis P.C.’s 1,000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged and stable, and share our clients’ goals to emphasize belonging and respect for the contributions of every employee. For more information, visit <https://www.jacksonlewis.com>.