Legal Update Article

Maryland Bans Non-Compete Agreements for Certain Healthcare Professionals

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Maryland is following a nationwide trend restricting non-competition agreements for medical professionals. Maryland House Bill (HB) 1388 voids all non-compete and conflict of interest provisions in employment contracts for certain veterinary practitioners and veterinary technicians beginning June 1, 2024.

Moreover, effective July 1, 2025, non-compete and conflict of interest provisions for healthcare professionals licensed under the Health Occupations Article who provide "direct patient care" will be banned or restricted. Such provisions will be banned for professionals earning "total annual compensation" of $350,000 or less and materially limited for professionals earning more than $350,000. For professionals earning more than $350,000, non-compete provisions will be unenforceable if they include (i) a restrictive period of more than one year or (ii) geographic limitation of greater than 10 miles from the professional's principal place of employment. In addition, if a patient of a professional earning more than $350,000 asks, employers will be required to inform the patient when the healthcare professional who is subject to a restrictive covenant transitions to a new practice location.

HB 1388, titled "Noncompete and Conflict of Interest Clauses for Veterinary and Health Care Professionals and Study of the Health Care Market," amends the Annotated Code of Maryland's Labor and Employment Section 3-716(a), expanding the application of current law to all employment contracts or conflict of interest provisions for an employee who is required to be licensed under the Health Occupations Article (licensed dentists, registered nurses, optometrists, pharmacists, physicians, podiatrists, counselors and therapists, psychologists, and social workers) or as a veterinary practitioner or technician under Title 2, Subtitle 3 of the Agriculture Article.

Under the new law, employment contracts that impede an employee's ability to seek subsequent employment or transition into self-employment in the same or similar business or trade will be unenforceable.

Additionally, the ban does not apply to employment contracts or agreements with respect to taking or using a client list or other proprietary client-related information.

Enactment of the Maryland law is against the backdrop of the Federal Trade Commission's (FTC's) Final Rule broadly banning non-compete agreements nationally, with only limited exceptions. The FTC's jurisdiction does not extend to not-for-profit entities including, presumably, not-for-profit healthcare organizations. The Supplementary Information accompanying the FTC's Final Rule makes clear that not-for-profit status will not be accepted at face value, and organizations will need to meet a two-part test to avoid the ban. While it seems clear the FTC intends to apply the Final Rule to not-for-profit healthcare organizations, its ability to do so remains to be seen, making new laws like Maryland's important to the FTC's stated mission to curb the use of non-compete agreements.

Implications for Maryland employers include:

1. Non-compete agreements and conflict of interest provisions will be unenforceable for veterinarians and covered healthcare providers.

2. Employers will need to review and possibly revise their employment contracts to comply.

3. Employers need to be mindful of the new law during the recruiting and hiring process.

4. Confidentiality and trade secret agreements can still be used to protect business interests.

If you have questions about legal developments related to restrictive covenants, contact a Jackson Lewis attorney to discuss.