

Rhode Island Prohibits Use of Non-Competition Agreements With Nurses; Governor Vetoes Broader Ban

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Rhode Island Governor Dan McKee signed a new law (R.I. Gen. Laws § 5-34-50) that prohibits the enforcement of non-competition agreements with advanced practice registered nurses (APRNs) in the state on June 17, 2024. Surprisingly, only three days after the APRN prohibition was enacted, the Rhode Island legislature sent a proposed bill containing a full ban on non-competition agreements (SB 2436) to Governor McKee for review. On June 26, 2024, Governor McKee vetoed this full ban, stating his concerns about the breadth of the proposed ban and that it exceeded the scope of the Federal Trade Commission’s April 23, 2024, final rule on non-competes. The Rhode Island legislature adjourned its 2024 legislative session on June 30, 2024, without seeking to override the governor’s veto.

Prohibitions

R.I. Gen. Laws § 5-34-50, entitled “APRN restrictive covenants void,” immediately prohibits non-competition provisions in employment contracts for APRNs in the state and eliminates time and scope restrictions on APRNs after leaving an eligible role.

The new law provides that “any restriction of the right of the APRN to practice shall be void and unenforceable with respect to said restriction,” including, but not limited to:

1. The right to practice in any geographic area for any period of time after the termination of the partnership, or professional relationship;
2. The right of an APRN to provide treatment, advise, consult with or establish a professional relationship with any current patient of the employer; and
3. The right of an APRN to solicit or seek to establish a professional relationship with any current patient of the employer.

Under the Rhode Island Noncompetition Agreement Act, R.I. Gen Laws § 28-59-1 (NAA), a “noncompetition agreement” is defined as an agreement “under which the employee or expected employee agrees that he or she will not engage in certain specified activities competitive with his or her employer after the employment relationship has ended.” Under the NAA, agreements with “covenants not to solicit or transact business with customers, clients, or vendors of the employer” are carved out from the definition of non-competition agreements.

The governor’s veto prevented the passage of SB 2436, which would have amended the NAA to prohibit non-competition agreements against employees in all cases except between an owner of a business and a prospective buyer. Therefore, for now, Rhode Island law remains unchanged and non-competition agreements remain permissible in



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Rhode Island other than with respect to the following workers: (1) non-exempt employees under the Fair Labor Standards Act; (2) undergraduate and graduate students; (3) employees aged 18 or younger; and (4) employees whose average annual earnings are not more than 250 percent of the federal poverty level for individuals established by federal guidelines. Additionally, since the governor's veto preserved the NAA as originally passed in 2019, customer and employee non-solicitation restrictions are still permissible as they are explicitly excluded from the definition of a non-competition agreement under the NAA.

Timing

R.I. Gen. Laws § 5-34-50 is immediately effective. Given that the statute renders "any restriction of the right of the APRN to practice ... void and unenforceable with respect to such restrictions," it appears that the new ban is retroactive and invalidates existing non-competition agreements as to APRNs. However, it would not be surprising to see some judicial interpretation as to the scope of the new law in this regard.

Exceptions

R.I. Gen. Laws § 5-34-50 allows non-competition restrictions only "in connection with the purchase and sale of a practice, providing the restrictive covenant and non-competition covenant is for a time period of not more than five (5) years."

Conclusion

While Rhode Island is following the recent trend of several other states which have limited employers' use of restrictive covenants in their employment agreements with certain employees, the governor's veto of the complete ban also follows similar vetoes in Maine and New York. We will continue to monitor whether the Rhode Island legislature revisits a broader ban on non-competition agreements during its next session. Please contact a Jackson Lewis attorney with any questions about potential strategies for non-competition agreements, non-solicitation agreements, confidentiality/non-disclosure agreements, and restrictive covenants generally.

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