

The Non-Compete Competition: Washington State's New Broad Ban on Non-Competes

Client Alerts

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Introduction

Last month, Washington state passed Engrossed Substitute House Bill 1155 (SB 1155), legislation that bans virtually all non-compete agreements and significantly narrows the scope of permissible non-solicitation agreements in the state. The new law takes effect on June 30, 2027, and applies retroactively to all existing non-compete agreements, rendering them void and unenforceable regardless of when they were entered into. Employers are required to make reasonable efforts to provide written notice by October 1, 2027, to all current and former employees and independent contractors who are subject to a non-competition agreement that their agreement is void and unenforceable. Any violation of this new law, including failure to provide the requisite notice, may subject the employer to actual or statutory damages.

Background: The Evolving Non-Compete Landscape

The enforceability of non-compete agreements varies significantly from state to state. In 2024, the Federal Trade Commission (FTC) attempted to implement essentially a nationwide ban on non-compete agreements. The FTC's rule was not implemented, keeping regulation of non-competes to the states.

California has prohibited non-compete agreements for over a century. In 2024, California amended its non-compete laws to impose notice requirements on employers and provide for statutory damages, provisions that are similar to the new Washington law. More recently, other states including Minnesota, North Dakota, and Oklahoma have enacted bans on such agreements. Several other states—including Colorado, Illinois, Maine, Maryland, Oregon, Rhode Island, and Virginia—have adopted significant restrictions, particularly for lower-wage workers.

Washington first addressed non-competes in 2019, when the legislature prohibited non-compete agreements for lower-wage earners and imposed income thresholds, notice requirements, and duration limits for higher-earning employees. However, the legislature found that those measures “did not go far enough.” SB 1155 replaces that earlier framework and is closest to the existing law in

California, as they apply retroactively to existing non-compete agreements and impose stringent notice requirements on employers.

Key Provisions of SB 1155

1. Complete Ban on Non-Compete Agreements

Under the new law, all non-competition covenants are void and unenforceable, regardless of when the parties entered into the agreement. The statute broadly defines a “non-competition covenant” to include any written or oral agreement that prohibits or restrains an employee or independent contractor from engaging in a lawful profession, trade, or business of any kind. The definition also encompasses provisions requiring an employee to return, repay, or forfeit any right, benefit, or compensation as a consequence of engaging in lawful employment elsewhere (e.g., certain equity forfeiture or clawback provisions).

2. Agreements That Remain Permissible

The ban does not extend to confidentiality agreements or other types of agreements to protect employers’ trade secrets.

Non-solicitation agreements are not banned outright, but the statute requires them to be narrowly construed. The law distinguishes between two types of permissible non-solicitation provisions:

- **Employee non-solicitation:** Employers may prohibit a departing employee from soliciting current employees to leave the employer.
- **Customer non-solicitation:** Employers may restrict a former employee from soliciting current or prospective customers, clients, or patients to shift their business away from the employer—but only where the employee established or substantially developed a direct relationship with the customer through their employment. Such restrictions are limited to a maximum of 18 months following separation. Any other agreement that “directly or indirectly prohibits the acceptance or transaction of business with a customer” is void under the new law.

3. Enforcement and Remedies

Any person aggrieved by a violation of the statute, including a former or current employee who did not receive appropriate notice that their non-compete agreements are invalid under the statute, may bring a cause of action and recover the greater of actual damages or a statutory penalty of \$5,000. The Washington Attorney General is also authorized to enforce the statute.

Recommended Next Steps for Employers

The new law applies to “all Washington-based workers and businesses.” Employers with operations or employees in Washington should begin preparing now for compliance with SB 1155, including by taking the following actions.

1. Review of All Existing Agreements

Review existing employment agreements, offer letters, equity compensation plans, and independent contractor agreements to identify any provisions that may constitute a prohibited non-competition covenant under the expanded statutory definition. Pay particular attention to forfeiture-for-competition clauses, customer restriction provisions, and any repayment obligations triggered by a departing employee's subsequent employment.

2. Provide Required Written Notice by October 2027

Develop a plan to provide written notice to current and former employees and independent contractors who are subject to a non-compete agreement. Maintain documentation of all notice efforts, including efforts to reach former employees.

3. Revise Restrictive Covenants

Update standard employment agreements and restrictive covenant templates to comply with the new statutory requirements. Employers can also consider strengthening permissible protections—such as confidentiality agreements, trade secret covenants, and invention assignment provisions—to safeguard business interests within the bounds of the new law.

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