

Proposed D.C. Non-Compete Legislation Would Prohibit the use of Non-compete Agreements for Many Employees

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The D.C. council is considering legislation that would prohibit the use of non-compete provisions for entry level and moderate-income employees, and would apply to D.C. workers that earn up to three times the minimum wage, currently equal to \$87,654 annually.

[The proposed legislation](#), entitled “The Ban on Non-Compete Agreements Amendment Act of 2019” (the “Act”), defines a “non-compete provision” as a: “[T]erm of a written agreement between an employer and an employee that restricts or bars the employee from being simultaneously or subsequently employed by another employer: (A) In a particular geographic region; or (B) For an indefinite or specified period of time”. Significantly, this language indicates that the Act would prohibit such non-compete restrictions on covered employees both during and after employment.

In addition, the Act, would prohibit restrictive language from being included in a company policy or employee handbook. The Act will not apply to existing agreements, only to those entered into on or after the effective date of the Act.

According to Councilmember Silverman, who introduced the legislation, “...non-compete agreements are particularly unfair for low-wage workers and contribute to income inequality in our city.” The Act stems from recommendations made by President Barack Obama in the State Call to Action on Non-Compete Agreements issued in 2016.

Employers that violate the Act would be subject to a fine ranging from \$500 to \$2,000, depending on the nature of the violation. The greatest fine will be imposed on employers who retaliate against workers for asking about their rights under the Act, or filing a complaint in connection with the Act.

As the Act is currently written, a number of questions remain for employers:

- What happens with regards to non-compete agreements for employees who are initially above the monetary threshold, but subsequently fall below the threshold because it rises faster than their wages?

- How would the Act apply to employees in tipped or commissioned positions, whose annual income may fluctuate?
- What happens in the case of employees that receive a raise during the year, putting them above the monetary threshold? Can the employer get them to sign a non-compete agreement at that time?
- How will employers handle potential backlash from certain tenured employees with non-compete provisions and their subsequently hired counterparts who are not subject to non-compete provisions?

We will continue to monitor the legislation and issue a follow up post if and when the Act is passed into law. In the meantime, employers may want to revise or strengthen their non-solicitation and/or confidentiality provisions, which do not appear to be implicated by the Act. In addition, employers should consider their approach to non-competes generally and, especially, whether they are necessary for employees at income levels covered by the Act.

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