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District of Columbia Bans the Enforcement of New Non-Compete Agreements

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On December 15, 2020, the District of Columbia Council unanimously passed the Ban on Non-Compete Agreements Amendment Act of 2020, under which the District of Columbia joins California and a small handful of jurisdictions across the country that have prohibited the enforcement of covenants not to compete.

The new law began as an effort to limit the enforcement of non-compete agreements against low wage employees, but on December 1, 2020 was amended to prohibit non-competes against all virtually all employees who perform work in D.C. The primary exception to the prohibition is for "medical specialists," defined as licensed physicians who have completed a medical residency and are paid at least $250,000 per year. Non-compete agreements may continue to be enforced against medical specialists, so long as certain procedural requirements are followed prior to the agreement's execution. In addition, non-compete agreements entered by the sellers of a business in connection with the business' sale remain enforceable. Importantly, however, the new law also prohibits employer policies that forbid employees from working for competitors *during* the employment relationship.

Although non-compete agreements are prohibited, confidentiality or non-disclosure agreements protecting confidential and proprietary information and trade secrets are still enforceable. The new law is less clear, however, whether non-solicitation agreements that prohibit employees from working with the employer's customers or recruiting its employees are enforceable. Many employers use non-solicitation agreements to impose a more limited restriction that prevents a departing employee from abusing a customer relationship. The language of the law does not appear to prohibit non-solicitation agreements, but, unlike similar non-compete prohibitions in other states, the law does not expressly preserve the enforceability of non-solicitation agreements.

D.C. employers that rely on non-compete agreements should take the following steps:

- The new law's prohibitions on the enforcement of non-compete agreements are not applicable to pre-existing agreements entered prior to the effective date of the law (which Polsinelli estimates will become effective in late February after congressional review).

Accordingly, **employers that do not have covenants not to compete with their D.C. employees should consider now whether they wish to implement these agreements**.

- Ensure on a going forward basis that employees entering positions that would typically be required to execute a non-compete are instead required to sign confidentiality and non-solicitation agreements instead.

- Hospital and other medical employers should update their onboarding processes for physicians to ensure that the physician is provided with any non-compete agreement and the other information required by the law sufficiently in advance to satisfy the new law's requirements.

- Review existing "moonlighting" policies and, if necessary, modify them to comply with the new law.

In addition to rendering non-competes void and unenforceable, the new law also provides employees with a private right of action to recover attorney's fees and statutory remedies of $500 to $3,000 per violation in cases of prohibited agreements. The D.C. government can also bring enforcement actions.

Finally, the law also prohibits retaliation against employees who seek to exercise their rights under the act or oppose illegal agreements.

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