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# DC Strengthens Worker Protections with Ban on Non-Compete Agreements

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On January 11, 2021, Mayor Muriel Bowser of the District of Columbia signed the "Ban on Non-Compete Agreements Amendment Act of 2020," which took effect on March 16, 2021. Non-compete provisions prohibit employees from simultaneously or subsequently engaging in other work in the same geographic area similar to their current employment and often last a year or longer after their current employment ends. These provisions can give employers oppressive control over their employees in that employees who are displeased with their current employment are often powerless to leave for another similar job or to start their own business using their expertise, as they know their current employer could bring them to court to enforce the non-compete provision. The new D.C. Ban will protect almost all employees from these onerous provisions going forward, allowing workers in D.C. to take more control over their careers and their lives.

## D.C. Ban on Non-Compete Agreements

The D.C. Ban is one of the most all-encompassing, worker-friendly laws regulating non-compete agreements in the country. It prohibits employers from requiring or requesting that any covered employee sign an agreement that includes a non-compete provision, and renders all non-compete provisions entered into after the Ban's effective date unenforceable. The Ban also forbids employers from instituting workplace policies, such as anti-moonlighting rules, that limit employees' ability to work for other people or start their own business while working for them. Importantly, the Ban also protects employees from retaliation if they refuse to agree to non-compete provisions or complain about provisions or workplace policies they reasonably believe violate the Ban. Finally, the law requires employers to provide written notice to employees about their rights under the Ban. Both the D.C. government – through the Mayor or the D.C. Attorney General – and individual employees aggrieved by violations of the Ban have the power to bring enforcement actions against employers in either an administrative proceeding or in court. Employers found liable for violations of the Ban can be ordered to pay affected employees from $500 to $2,500 for first violations, and over $3,000 for subsequent violations.

Importantly, the D.C. Ban is not retroactive, meaning it only applies to non-compete provisions entered into after the law's applicability date; an employee with a valid non-compete agreement predating the law's applicability date is still bound by the agreement. Although the Ban took effect on March 16, 2021, the "applicability date" will not occur until the Ban is included in an approved budget

and financial plan, which will likely occur at the start of the next fiscal year on October 1, 2021. While the Ban's definitions of employer and employee are broad, covering almost any employee who performs any work within D.C., the Ban only applies to private employers. Further there are important exceptions. Three categories of employees are not protected at all by the Ban: volunteers in educational, charitable, religious, or nonprofit organizations; lay members elected or appointed to office within a religious organization who are engaged in religious functions; and casual babysitters working at or around the employer's residence. Furthermore, the Ban only gives limited rights to "medical specialists," meaning licensed physicians practicing medicine and earning more than $250,000 annually. While the Ban does not prohibit non-compete agreements for medical specialists, it requires employers to give them at least 14 days to review the provision before execution of the agreement. Finally, the Ban does not prohibit employers from entering into confidentiality agreements with employees to protect confidential, proprietary, or sensitive information, customer or client lists, or trade secrets. It also does not prohibit non-compete agreements between sellers and buyers made in connection with the sale of a business.

## Non-Compete Agreements in Other States

By enacting the Ban, D.C. has joined a small group of states on the forefront of protecting employees from harmful non-compete provisions. Like D.C., California and Oklahoma also broadly prohibit the entry into or enforcement of non-compete provisions. California and Oklahoma do not allow any non-compete agreements between employers and employees, but do allow non-compete agreements connected to the sale of goodwill or ownership interest in a business or the dissolution of business partnerships, as well as agreements to protect trade secrets. Another group of states, including Colorado, Idaho, Illinois, Maryland, New Hampshire, Oregon, Rhode Island, Virginia, and Washington, restrict the use of non-compete agreements for lower wage or non-management employees. Some of these states, like Idaho and Colorado, define the job duties of the kind of high-level employees which employers can subject to non-compete agreements. The other states set income thresholds to define the protected group of employees. For example, Maryland's new non-compete law, effective October 1, 2019, protects employees earning less than $15 per hour or $31,200 annually, and Virginia's new law, effective July 1, 2021, protects those earning less than the average weekly wage in Virginia, currently calculated as $1,204 per week or $62,608 annually. The vast majority of states do not have such protective laws and generally allow employers to impose non-compete agreements on all employees. Accordingly, most employees in the country have no protection if their employers require them to agree to a non-compete provision as a condition of their work.

## Federal Law for Non-Compete Agreements

While there is currently no federal law regulating non-compete agreements, Congress is trying to change that. Recognizing that 20% of American workers are currently constrained in their employment searches by non-compete agreements, on February 25, 2021, a bipartisan group of Senators and Representatives introduced the Workforce Mobility Act in Congress. Like the D.C. Ban, the Workforce Mobility Act would prohibit and render unenforceable almost all non-compete agreements. Similar to the D.C. Ban, the Act's prohibitions would not apply to volunteers or government employees. The Act would also allow non-competes connected to the sale of goodwill or ownership interest in a business or the dissolution or disassociation of partnerships. The Act would empower the Federal Trade Commission and the Department of Labor to enforce the prohibition on non-competes. The Act would also create a private right of action, allowing those harmed by unlawful non-compete agreements to file a lawsuit to recover damages and attorneys' fees. In sum, if Congress were to pass the Workforce Mobility Act, almost every employee in the country would enjoy

the broad protection from non-competes now available to the employees in D.C. However, Members of Congress had unsuccessfully introduced versions of the Workforce Mobility Act in 2018, 2019, and 2020, so there is no guarantee that the law will pass.

Given the lack of nationwide protections for workers, the D.C. Ban represents a huge step forward for employees working in the nation's capital. Until Congress passes the Workforce Mobility Act, employee protections from restrictive non-compete provisions will vary state-to-state, and many employers will continue to impede their employees' freedom to move to new work. If your employer asks you to sign a non-compete agreement and you want to know if you are covered by any legal protections, it is important that you consult an employment lawyer familiar with the laws in your state because many jurisdictions strike down agreements that overreach in terms of geographic and temporal scope so even if you have signed an agreement, you may be entitled to relief.



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