

Nevada Amends Law Regulating Noncompetition Covenants

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Governor Steve Sisolak recently signed [Assembly Bill 47](#), which amends Nevada's statute governing noncompetition agreements (Nevada Revised Statutes 613.195). Employers should be aware of the following changes to the law, which will go into effect on October 1, 2021.

First, under the amended Nevada statute, employers are explicitly prohibited from bringing an action to restrict a former employee from providing service to a former customer or client if:

1. the former employee did not solicit the former customer or client;
2. the customer or client voluntarily chose to leave and seek services from the former employee; and
3. the former employee is otherwise complying with the limitations in the covenant as to time, geographical area and scope of activity to be restrained, other than any limitation on providing services to a former customer or client who seeks the services of the former employee without any contact instigated by the former employee.

While the current Nevada statute provides that covenants could not impose these restrictions, the explicit ban on employer lawsuits seeking to restrict employees under these circumstances is new. If an employer restricts or attempts to restrict a former employee in this manner, the court must award reasonable attorney's fees and costs to the employee.

Second, regardless of who brings the action, courts must now blue pencil a covenant that is "supported by valuable consideration but contains limitations as to time, geographical area or scope of activity to be restrained that are not reasonable, imposes a greater restraint than is necessary for the protection of the employer..., or imposes undue hardship on the employee." Prior to this amendment, courts were only required to "revise the covenant to the extent necessary and enforce the covenant as revised" if the action was brought by the employer seeking to enforce the non-compete. Now, courts must blue pencil and enforce the covenant, rather than just declare it unlawful, even if the employee has brought the court action to challenge the non-compete.

Third, the amended law now prohibits non-competes for any "employee who is paid solely on an hourly wage basis, exclusive of any tips or gratuities." If a court finds that a non-compete applies to

an employee “paid solely on an hourly wage basis,” the court must award the employee reasonable attorney’s fees and costs. The court is required to award such fees and costs regardless of whether the employer brought the court action to enforce the covenant, or the employee brought the action to challenge the covenant.

Employers should review their agreements and consult with counsel to ensure that any non-compete provisions are in compliance with this amended law.

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