

D.C.'s Ban on Noncompete Agreements Is Set for Another Postponement

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For employers wary of the looming implementation of the District of Columbia's [Ban on Non-Compete Agreements Amendment Act of 2020](#), it appears that the waiting game will continue until at least October 1, 2022. Although March 16, 2021, was the act's "effective date," the act's [near-total ban on noncompete agreements](#) will not have true legal effect until the legislation's "applicability date," which the Council of the District of Columbia is delaying once again. Last fall, the act's applicability date was pushed back to April 1, 2022, by way of the [Fiscal Year 2022 Budget Support Act of 2021](#).

Proposal for a New Applicability Date: October 1, 2022

On February 24, 2022, Councilmember Elissa Silverman, who chairs the Council's Committee on Labor and Workforce Development, requested that the Council consider legislation to postpone the act's applicability date from April 1, 2022, until October 1, 2022. In her [request](#), Silverman stated that the committee was consulting extensively with the business community and that the committee needed additional time to consider legislation to amend the act. The Council responded on March 1, 2022, by adopting the [Ban on Non-Compete Agreements Applicability Emergency Declaration Resolution of 2022](#), declaring an emergency existed that required an extension of the act's applicability date until October 1, 2022. The Council also unanimously approved companion legislation (the [Ban on Non-Compete Agreements Applicability Emergency Amendment Act of 2022](#)), which would amend section 302 of the act to incorporate the new applicability date. Mayor Muriel Bowser is expected to sign the legislation.

This second postponement will be welcomed by D.C. employers, but it does not bring them closer to a solution that adequately addresses their concerns over the threat of competition by current employees. In addition to banning almost all postemployment noncompete agreements, the act will ban workplace policies and agreements that prohibit current employees from having other jobs while they are employed by their employers. As a result, employers will be prevented from disciplining or discharging employees who operate competing businesses or work second jobs with competitors. The impact of the act will be felt most acutely by real estate agencies, broadcasters, professional sports teams, and law firms, whose key employees are valuable in large part because their services are not available to competitors.

Prospects for Amendment

Despite broad resistance to the act within the Washington, D.C., business community, progress on amending the original legislation has been modest to date. In May 2021, Councilmember Silverman proposed the [Non-Compete Conflict of Interest Clarification Amendment Act of 2021](#). As introduced, the bill would protect confidential information by allowing employers to prohibit employees not just from *disclosing* such information, but also from *using* such information. The proposal also would amend the act to clarify that the noncompete ban would not apply to “bona fide conflict of interest provisions in workplace policies.” The phrase “bona fide conflict of interest provision[s]” is narrowly defined in the bill as “an otherwise lawful written provision or workplace policy that bars an employee from accepting money or a thing of value from a person during the employee’s employment with the employer because the employer reasonably believes the employee’s acceptance of money or a thing of value from the person will cause the employer to conduct its business in an unethical manner or violate applicable local, state, or federal laws or rules.”

The Committee on Labor and Workforce Development held a public hearing on July 14, 2021, to address Councilmember Silverman’s proposed amendment, but the bill has not been considered by the Council as a whole. Absent changes to Silverman’s bill that further amend or clarify the act, her bill will not prevent the irreparable harm that can result when current employees simultaneously work for their employer’s direct competitors.

Next Steps

Mayor Bowser is expected to approve the legislation setting the act’s new October 1, 2022, applicability date. While that date looms on the horizon, the business community will be hoping for a legislative breakthrough that better protects employers’ interests. In the meantime, D.C. employers are not prohibited from entering into or enforcing noncompete agreements with new or existing employees. Absent an intervening change in the legislation’s text, the act will spare agreements containing noncompete provisions that have been entered into *before* the new applicability date. In contrast, workplace *policies* containing noncompete provisions will not enjoy “grandfathering” treatment. Such policies will need to conform to the act, even if they are issued before the applicability date.

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