

Minnesota Enacts Omnibus Jobs Bill With Major Changes For Minnesota Employers

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On May 24, 2023, Minnesota Governor Tim Walz signed into law the Omnibus Jobs Bill SF 3035 (the “Bill”). The Bill has significant implications for employers with employees in Minnesota and includes numerous changes to Minnesota state law, including a sweeping ban on non-compete agreements; a ban on mandatory employer-sponsored meetings; newly mandated statewide paid sick leave; and expanded protections for parental leave and pregnant employees, among others. Some provisions will take effect as early as July 1, 2023, with earned sick and safe time provisions effective January 1, 2024.

Key Provisions of the Bill

Ban on Non-Compete Agreements (Effective July 1, 2023)

The Omnibus Jobs Bill includes a near-complete ban on non-compete clauses in employment agreements. The new prohibition applies to both employees and independent contractors, regardless of the person’s income. The Bill defines non-competes as:

[A]n agreement between an employee and employer that restricts the employee, after termination of the employment, from performing: (1) work for another employer for a specified period of time; (2) work in a specified geographical area; or (3) work for another employer in a capacity that is similar to the employee’s work for the employer that is party to the agreement.

There are two key exceptions to the statute, and non-compete agreements will be valid and enforceable if: (i) they are entered into during the sale of a business; or (ii) they are entered into in anticipation of the dissolution of a business.

Also notable is that the Bill’s definition of a “covenant not to compete” excludes: (i) “a nondisclosure agreement, or agreement designed to protect trade secrets or confidential information,” or (ii) “a nonsolicitation agreement, or agreement restricting the ability to use client or contact lists, or solicit customers of the employer.”

Courts may award reasonable attorneys' fees to persons enforcing their rights under this law, and employers may not insert a Choice of Law provision favoring the laws of another state to avoid the Bill's limitations.

This prohibition is effective July 1, 2023, but does not apply retroactively to agreements entered into before the effective date.

Statewide Earned Sick and Safe Time (Effective January 1, 2024)

The Bill creates a new statewide obligation requiring employers to provide "earned sick and safe time" (ESST) to all Minnesota employees, including temporary and seasonal employees. Specifically, employers must provide "a minimum of one hour of earned sick and safe time for every 30 hours," up to 48 hours per year. Similar to the paid sick leave requirements in Minneapolis, St. Paul, and Bloomington, this Bill permits employees to carry over up to 80 hours of accrued leave per year, or front-load 80 hours of ESST, and applies to employers with at least 1 employee.

Employees may use accrued ESST for: (1) the employee's own illness, injury, health condition, or preventative care; (2) to care for a family member's illness, injury, health condition, or preventative care; (3) absence due to domestic violence, sexual assault, or stalking of employee or family member; (4) business closures due to weather or other public emergency; and (5) the employee's inability to work or telework due to health concerns related to the potential transmission of a communicable illness related to a public emergency.

Importantly, the Bill requires employers to give all employees notice that they are entitled to ESST, that retaliation against employees who request or use ESST is prohibited, and that employees have a right to bring civil action if ESST is denied by the employer. The notice must be included in the employee handbook, if one exists.

SF 3035 provides that existing policies comply with the new ESST requirement as long as the policy "meet[s] or exceed[s]" the minimum standards and requirements provided in the Bill.

This article is effective January 1, 2024, and does not apply retroactively to agreements entered into before the effective date.

Nursing Mothers, Lactating Employees, and Pregnancy Accommodations (Effective July 1, 2023)

The Bill also includes expanded protections for nursing mothers and "lactating employees," and increases pregnancy accommodation rights.

Specifically, with regard to "lactating employees," the Bill removes language limiting reasonable paid breaks for expressing milk for infant children "during the first twelve months following a birth" such that breaks will no longer be time-bound. Further, the Bill specifies that breaks "may" run concurrently with break times already provided to the employee, instead of "must." The Bill also introduces language requiring lactation rooms to be "clean, private, and secure."

SF 3035 also provides for several additional pregnancy accommodation provisions, including temporary transfer to a less strenuous or hazardous position, temporary leaves of absence, and more frequent or longer break periods.

These new obligations are effective July 1, 2023.

Other Notable Provisions

The Bill also creates numerous other changes to Minnesota state law which will require review by all Minnesota employers. These include:

- New prohibition on mandatory employer-sponsored meetings or communications that discuss religious or political matters
- Implementation of new safety requirements for workers in the warehouse industry
- Revisions to “Packinghouse Workers Bill of Rights” to amend protections for workers at meatpacking and poultry processing facilities
- Creation of a “Nursing Home Workforce Standards Board” to protect the health and welfare of nursing home workers

Takeaways

Minnesota has now joined a small contingent of states that have put into place a near-total ban on non-compete provisions (other states include California, North Dakota, and Oklahoma). This comes at a time of increased scrutiny and skepticism of non-compete provisions from various federal agencies, courts, and state legislatures.

In addition, Omnibus Jobs Bill SF 3035 includes sweeping changes to Minnesota state employment laws that will require Minnesota employers to pay careful attention to employee PTO, vacation, and sick or personal leave policies to ensure compliance by the beginning of next year. Employers should also be reviewing their policies and practices related to accommodations for nursing mothers, lactating employees, and pregnant workers.

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