

## States with Penalties for Non-Compete Law Violations

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In recent months, we have written quite a bit on the continuing trend to restrict employee non-compete agreements. For example, [last month](#) we reported on New York's sweeping ban on non-competes, which was passed by the state legislature and is headed toward Governor Hochul's desk. And in January, we described the Federal Trade Commission's [proposed regulation](#) that, if adopted, would effectively ban employee non-competes throughout the nation.

These measures follow on the heels of a [number of states](#) imposing significant barriers to the use of non-competes. As the trend continues, employers in locations where such restrictive covenants are prohibited or limited may be tempted to ask, "why not have employees sign non-competes anyway? Worst comes to worst, the document is unenforceable, but we may as well try."

Actually, in a number of states, the consequences for imposing prohibited non-compete obligations on employees goes beyond mere unenforceability. Employers should be aware of which states go the additional step of imposing civil (and sometimes even criminal) penalties for improperly requiring employees to sign non-compete agreements.

Currently, nine states — California, Colorado, Illinois, Maine, Nevada, Oregon, Virginia, Washington, and Wisconsin — and Washington, D.C., impose such penalties.

- **California:** In California, non-compete agreements are prohibited by law ([Cal. Bus. & Prof. Code § 16600](#)), and employers cannot require employees or applicants to agree in writing to any term or condition known to be prohibited by law ([Cal. Lab. Code § 432.5](#)). California employers who violate the ban may be found guilty of a misdemeanor and either fined up to \$1,000, imprisoned up to six months, or both ([Cal. Lab. Code § 23](#) and [Cal. Lab. Code § 433](#)).
- **Colorado:** Entering into, presenting to an employee or prospective employee as a term of employment, or attempting to enforce an unenforceable non-compete agreement is a violation of Colorado law ([C.R.S. § 8-2-113](#)). An employer that uses force, threats, or other means of intimidation to prevent any person from engaging in any lawful occupation wherever the person chooses to work may be found guilty of a Class 2 misdemeanor. An employer may also be liable for actual damages and a \$5,000 penalty per harmed employee or prospective employee.

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- **Illinois:** Illinois law establishes various non-compete restrictions including an income threshold ([820 Ill. Comp. Stat. 90/](#)). For violations of the non-compete restrictions, the Illinois Attorney General may request — and a court may impose — a civil penalty not to exceed \$5,000 for each violation and \$10,000 for each repeat violation within a five-year period.
  - **Maine:** Maine law establishes an income threshold and various notification requirements, among other things ([Me. Rev. Stat. Ann. Tit. 26, §§ 599-A to 599-B](#)). Employers who violate these requirements may be found guilty of a civil violation and can be fined a minimum of \$5,000.
  - **Nevada:** Nevada law establishes an income threshold and various other requirements for employers who enter non-compete agreements ([Nev. Rev. Stat. §§ 613.195, 613.200](#)). Employers who violate these requirements may be guilty of a gross misdemeanor and fined up to \$5,000 for each violation. In addition, the “Labor Commission may impose against each culpable party an administrative penalty of not more than \$5,000” for each violation.” If fines or administrative penalties are imposed against an employer, the employer may also be liable to pay for the cost of the proceeding, “including the investigative costs and attorney’s fees.”
  - **Oregon:** Oregon’s non-compete law is part of the state’s minimum wage laws ([Or. Rev. Stat. § 653.295](#)). It does not state how or if the law can be “violated.” Instead, it merely states that a non-compete agreement is void and unenforceable if various requirements are not satisfied. Per the state’s catchall statute regarding its minimum wage laws ([Or. Rev. Stat. § 653.991](#)), a violation constitutes a misdemeanor. However, it is unclear when, if ever, entering an invalid non-compete agreement gives rise to a misdemeanor.
  - **Virginia:** An employer violates Virginia’s non-compete law ([Va. Code Ann. § 40.1-28.7:8](#)) by entering into, enforcing, or threatening to enforce an invalid non-compete agreement with a low-wage employee. Employers who violate these restrictions may be subject to a \$10,000 civil penalty for each violation. Virginia law also creates posting requirements. An employer who fails to post the non-compete law in the workplace will be issued a written warning for the first offense, a civil penalty not to exceed \$250 for the second offense, and a civil penalty not to exceed \$1,000 for each subsequent offense.
  - **Washington:** If a court or arbitrator finds that a non-compete agreement violates Washington’s non-compete law, the violator may be required to pay the aggrieved party actual damages or a statutory penalty of \$5,000 — whichever is greater — along with reasonable attorney’s fees, expenses, and costs ([Wash. Rev. Code. § 49.62.080](#)). An employer seeking to enforce a non-compete agreement may be subject to this penalty, even if a court or arbitrator reforms, rewrites, modifies, or partly enforces the agreement.
  - **Washington, D.C.:** D.C. non-compete law establishes an income threshold and various notice requirements ([D.C. Act 24-256](#)). Employers that violate these restrictions may be subject to an administrative penalty between \$350 and \$1,000. Moreover, an employer that attempts to enforce an unenforceable or void non-compete provision is liable for a minimum of \$1,500 to each employee against whom the employer attempted to enforce the agreement. An employer that violates the notification requirements may be liable for \$250 for each violation to each employee subjected to the violation.
  - **Wisconsin:** Under Wisconsin law ([Wis. Stat. § 103.465](#)), a non-compete agreement that imposes “an unreasonable restraint is illegal, void, and unenforceable.” But non-compete

agreements are otherwise lawful so long as they are reasonably necessary to protect the employer. Under a catchall statute that imposes fines for violations of Wisconsin employment regulations, an employer that violates the state's non-compete law could be fined between \$10 to \$100 for each violation ([Wis. Stat. § 103.005](#)). Note, however, that this catchall penalty statute does not currently appear to have been enforced for non-compete violations.

Employers expecting to enter non-compete agreements with employees in the above-listed states should work with counsel to make sure their agreements comply with state-specific requirements. This is a rapidly evolving area of non-compete law as more state legislatures (and the federal government) consider bans and/or limits on employee-based non-compete agreements. It is anticipated that other states may adopt similar penalties in the near future.

*This article was prepared with the assistance of 2023 summer associate Kitty Young.*

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