

New York Governor Signs Law Limiting Employment Clauses for Assignment of Employee Inventions

Article By:

Kelly M. Cardin

Joseph B. Cartafalsa

Zachary V. Zagger

A recently enacted New York State law that took effect immediately restricts employers' use of employment agreements which require that employees assign to their employer rights to inventions that were created by the employee on his/her own time and without the use of the employer's resources.

Quick Hits

- New York State enacts a law that makes unenforceable employment provisions that require employees to assign to their employers inventions employees developed on their own time and with their own resources.
- The law was signed by Governor Kathy Hochul on September 15, 2023, and took immediate effect.

On September 15, 2023, Governor Kathy Hochul signed [Senate Bill \(S\) 5640](#) into law, which amends New York State Labor Law, to make unenforceable employment agreement provisions that require employees to assign their rights to inventions developed on their own time and with their own resources.

Specifically, the new law states that employers cannot include a provision to assign inventions that are developed by employees "entirely on [their]

own time without using the employer’s equipment, supplies, facilities, or trade secret information.” The law further deems such a provision “against the public policy” of New York State.

Importantly, however, the new law does not apply inventions by employees that either relate to their “employer’s business, or actual or demonstrably anticipated research or development” or inventions that “result from any work performed by the employee for the employer.” Thus, while the law prohibits the assignment of inventions wholly of the employee’s creation, the law does not prohibit employers from requiring the assignment of inventions created or developed as part of work duties and/or using the employers’ resources, such as work time, equipment, facilities, supplies, and/or intellectual property.

Intellectual Property

Employers often rely on confidentiality clauses and other restrictive covenants in employment agreements to protect intellectual property rights, including employers’ trade secrets and other proprietary information.

With the addition of the New York law, there are now eleven states—including California, Delaware, Illinois, Kansas, Minnesota, Nevada, New Jersey, North Carolina, Utah, and Washington—that have enacted limitations on employers asking employees to assign work product created by employees to the employer.

The New York State law refers to “inventions” by employers, but a memorandum submitted by the law’s sponsor, Jessica Ramos (D-13), suggests the aim of the law is broader to cover intellectual property underlying such inventions.

The memorandum states that the purpose of the law is to prevent “[o]verly broad contracts [that] can rob employees of their intellectual property” and that such restrictions inhibit innovation and cause talent to seek out employment in other states with such protections.

Next Steps

The New York restriction took immediate effect immediately, meaning it already has implications for employers in the state. Employers may want to review their employment agreements for provisions that require employees to assign inventions or other intellectual property to the employer in light of the new law's restrictions.

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