

New York Legislature Proposes New Bill Banning Non-Compete Agreements

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The New York Legislature is set to make another attempt to ban non-competes for all but highly compensated individuals. At the end of the 2023 legislative session, the New York Legislature passed a bill that would have banned non-compete agreements for all employees regardless of wage or income level. Governor Kathy Hochul vetoed this bill while expressing her support for a more limited ban stating that she wanted to “strike a balance” between protecting middle-class and low-wage workers and “allowing New York’s businesses to retain highly compensated talent.”

On February 10, 2025, New York State Senator Sean Ryan introduced a new bill ([S4641](#)) that would ban non-compete agreements that responds to some of Gov. Hochul’s criticisms of the previous bill.

The Proposed Ban Remains Very Broad

Similar to the previous bill, the definition of “non-compete agreement” is incredibly broad. The bill purports to apply to “any agreement, or clause contained in any agreement, between an employer and a covered individual that prohibits or restricts such covered individual from obtaining employment, after the conclusion of employment with the employer.” Based on this definition, the bill could be interpreted to apply to forfeiture-for-competition, garden-leave, and other similar covenants used to protect competitive interests in addition to traditional non-competes.

Despite the broad definition of “non-compete agreement,” the bill also retains some exceptions from the previous bill. Specifically, the bill permits agreements that: (a) establish a fixed term of service and/or exclusivity during employment; (b) prohibit disclosure of trade secrets; (c) prohibit disclosure of confidential and proprietary client information; or (d) prohibit solicitation of clients of the employer. Notably, the bill is silent on whether employee non-solicitation agreements will remain enforceable.

New Scope of Covered Employees

While the previous version of the non-compete bill did not exclude any individuals from coverage, this bill excludes highly compensated employees. The bill applies to health related professionals and any person “other than a highly compensated individual who, whether or not employed under a contract of employment, performs or has performed work or services for another person on such terms and conditions that they are, in relation to that other person, in a position of economic dependence on,

and under an obligation to perform duties for, that other person.” The term “highly compensated individual is defined as “any individual who is compensated at an average annualized rate of cash compensation ... equivalent to or greater than [\$500,000] per year.” The term “health related professional” includes physicians, physician assistants, chiropractors, dentists, perfusionists, veterinarians, physical therapists, pharmacists, nurses, podiatrists, optometrists, psychologists, occupational therapists, speech pathologists, audiologists, and mental health practitioners.

Sale of Business Exception Included

The bill also includes an explicit carve-out for non-compete agreements entered in the context of a sale of a business. The new bill does not prohibit “the inclusion and enforcement of non-compete agreements or other similar covenants in the sale of the goodwill of a business or the sale or disposition of a majority of an ownership interest in a business by a partner of a partnership, a member of a limited liability company ... or any such person or entity owning fifteen percent or more ownership interest in a business.”

One of the major criticisms of the previous bill was that it did not include such a carve-out.

Mandatory Notice Requirement & Choice of Law Restrictions

The bill would also add a few additional compliance requirements. First, the bill mandates that employers inform employees of their “protections and rights” under the non-compete ban by conspicuously posting a notice to be developed by the New York Department of Labor. Second, the bill would prohibit choice-of-law/choice-of-venue provisions that “have the effect of avoiding or limiting” the non-compete ban for covered individuals who lived or were employed in New York for at least 30 days before the termination of their employment, including “individuals who worked remotely in another state but who reported to a New York worksite or office or who reported to a New York-based supervisor.”

A Clarified Private Right of Action Remains

The new version of the bill would permit a covered individual to bring a civil action for violations of the proposed ban on non-compete agreements within two years of when (1) the non-compete agreement was signed, (2) the covered individual learned about the non-compete agreement, (3) when the employment or contractual relationship is terminated, or (4) when the employer takes steps to enforce the non-compete agreement. A court would have jurisdiction to void the non-compete agreement at issue, enjoin the conduct of any entity seeking to enforce a void non-compete, award compensatory damages/damages for lost compensation, award attorneys’ fees and costs, and order the payment of up to \$10,000 in liquidated damages for each covered individual or health related professional.

No Retroactive Effect

Finally, the bill retains the provisions indicating that it would only apply prospectively. The bill states that it would go into effect 30 days after becoming law and would be applicable to contracts entered into or modified on or after the effective date.

Key Takeaways

There are still several steps that need to be met before this bill becomes law. At the time of writing,

the bill has not been voted out of committee. That said, there is clearly political will in Albany to curb the use of non-compete agreements. Employers should stay informed about the status of this bill and review the restrictive covenants they have in place to determine what impact the bill would have on such agreements if passed.

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