

## **State Attorneys General Investigating Use of Non-Competes by Fast Food Franchisors**

Article By:

Employment, Labor, Workforce Management

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On Monday, attorneys general in eleven states, including New York, New Jersey, Massachusetts, California, and Illinois, revealed that they are investigating several prominent fast food franchisors for their potential use of no-poaching or non-compete agreements restricting the ability of low wage workers to obtain a better-paying job with another franchise. To that end, these attorneys general have propounded document and information requests to these restaurants, returnable August 6, 2018.

In the Illinois AG's press release, Attorney General Madigan stated that "No-poach agreements trap workers in low-wage jobs and limit their ability to seek promotion into higher-paying positions within the same chain of restaurants." Madigan claims that at least 58 percent of major franchisors have no-poach provisions in their franchise agreements. This is not the first time that the Illinois AG has taken aim at non-compete agreements. Over two years ago, Madigan's office sued sandwich chain Jimmy John's for employing what it deemed "highly restrictive non-compete agreements," ultimately reaching a \$100,000 settlement with the franchisor. Ten months after Illinois passed the Freedom to Work Act, which prohibits private sector employers from requiring non-compete covenants of low-wage employees, defined as the greater of the applicable federal, state, or local minimum wage (currently \$7.25 under federal law and \$8.25 under Illinois state law) or \$13 per hour, Madigan sued a national payday lender for requiring its employees, including workers who earn less than \$13 an hour, to sign a non-compete agreement as a condition of employment.

Illinois is not the only state to pursue non-compete reform. Several other states recently have enacted legislation curbing the use of non-competes with respect to certain categories of workers, such as certified nurse practitioners and midwives (New Mexico) and workers in the broadcasting industry earning under a certain salary (Utah). Other states have proposed similar legislation. For example, New Hampshire bill SB 423 would ban non-compete agreements with "low-wage employees." On the other end of the spectrum, Vermont House Bill 556 and Pennsylvania House Bill 1938 would ban *all* non-competes other than those formed in connection with the sale of an ownership interest in a business entity or the dissolution of a partnership or limited liability company. Even if these bills ultimately fail, they signal a rising trend of state-level restrictive covenant reform, which will likely gain momentum as state attorneys general step up enforcement in this area.

National Law Review, Volume VIII, Number 192

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