

## Illinois Freedom to Work Act limits restrictive agreements starting January 1, 2022



Julia Ross | Thursday, September 9, 2021

*This article is part of a [McDonald Hopkins series on developments in restrictive covenant law](#) that dives deeper into how employers can protect their business interests in light of state - and potentially federal - limitations, strategies for revising employers' non-compete and non-solicitation agreements, and other topics that will help businesses navigate the changing landscape of employee restrictive covenants.*

On August 13, 2021, Illinois Governor J.B. Pritzker signed Senate Bill 0672 into law, officially amending the Illinois Freedom to Work Act. Starting on January 1, 2022, Illinois employers will have additional factors to consider if they plan to enter into non-competition and/or non-solicitation agreements with their employees.

As detailed in our [earlier article](#), the Bill, passed by the Illinois General Assembly May 30, 2021, simultaneously imposes restrictions on the formation of non-competition and non-solicitation agreements and clarifies how the state will enforce current contractual restrictions related to non-competition and non-solicitation agreements. Notably, Bill 0672 requires employers to provide employees with a copy of their non-competition and/or non-solicitation agreement before the start of employee's employment and provide the employee with at least 14 calendar days to review the agreement.

Employers should take note that effective January 1, 2022 the following types of agreements will be unenforceable in Illinois:

## Illinois Freedom to Work Act limits restrictive ag

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- Non-competition agreements restricting an employee's ability to provide: (1) any work for another employer for a specified period of time; (2) any work in a specified geographical area; or (3) similar work for another employer, if the employee's yearly salary is less than \$75,000.

The \$75,000 yearly earning threshold will increase in \$5,000 increments every five years beginning on January 1, 2027.

- Non-competition agreements with employees covered by collective bargaining agreements under the Illinois Public Labor Relations Act or the Illinois Educational Labor Relations Act, as well as employees employed in construction (unless the employee primarily performs management, engineering or architectural, design, or sales functions, or is a shareholder, partner, or owner of the employer).
- Non-solicitation agreements restricting an employee from soliciting the employer's other employees or an employee from soliciting, for the purpose of selling products or services to, or interfering with the employer's relationships with, the employer's clients, prospective clients, vendors, prospective vendors, suppliers, prospective suppliers, or other business relationships, if the employee's yearly salary is less than \$45,000.

The \$45,000 yearly earning threshold will increase in \$2,500 increments every five years beginning on January 1, 2027.

- Agreements without adequate consideration (i.e., whether or not the employee worked for the employer for at least 2 years after signing a non-compete or non-solicitation agreement or a period of employment plus additional professional or financial benefits, or solely professional or financial benefits).
- Agreements unrelated to a valid employment relationship.
- Agreements with restrictions greater than required to protect the employer's legitimate business interests (reviewing a totality of circumstances including the employee's exposure to the employer's customers and other employees, the status of the customer relationships, the employee's acquisition, use, or knowledge of confidential information, and the time, place, and scope restrictions of the agreement).
- Agreements imposing undue hardship on the employee.
- Agreements injuring the public.
- Agreements in which the employer does not advise the employee in writing to consult with an attorney before entering into the agreement.

Additionally, Bill 0672 allows an employee to recover attorneys' fees, and other "appropriate relief," if the employee prevails on a claim filed by an employer seeking to enforce a restrictive covenant covered by the

## Illinois Freedom to Work Act limits restrictive ag

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bill.

McDonald Hopkins recommends that Illinois employers ensure compliance with Bill 0672 as they enter into any new non-competition and non-solicitation agreements and also analyze their current non-competition and non-solicitation agreements to ensure compliance with these amendments before January 1, 2022.

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Team member bio