Companies with employees in Massachusetts will be affected by non-compete agreement reform

TIMOTHY LOWE, JAMES GISZCZAK, JAMES BOUTROUS II | ALERT | AUG 16, 2018

Massachusetts Governor Charlie Baker signed into law a non-compete reform bill on Aug. 10, placing restrictions on the execution and scope of non-compete agreements and banning their use and enforcement against certain employees, including some hourly workers, students, and employees fired without cause or laid off.

The bill was passed by the Massachusetts legislature Aug. 1. If you have employees in Massachusetts, you should review your non-compete agreements now to ensure they will comply with this new law, which will take effect on Oct. 1.

Importantly, the new law only applies to "noncompetition agreements," i.e., agreements in which an employee agrees to "not engage in certain specified activities competitive with his or her employer after the employment relationship has ended." The statute specifically exempts non-solicitation agreements related to both clients and employees and severance agreements (if the employee is provided seven days to revoke the severance agreement).

The highlights of the new law:

- Non-competition agreements must be in writing, signed by both the employer and employee, and expressly state the employee has the right to a review of the agreement by counsel. The statute does not define "signed," which leaves open whether electronically accepted agreements, like clickwrap agreements, will be enforceable.
- If a noncompetition agreement is required at the beginning of employment, it must be signed by both the employer and the employee and it must be provided to the employee at the earlier of the offer of employment or 10 business days before commencement of employment.
- If a noncompetition agreement is proposed during employment, it must be supported by fair and reasonable compensation independent from continued employment and must be provided to the employee 10 days before it takes effect.
- A noncompetition agreement must be no broader than necessary to protect the employer's trade secrets, confidential information, and goodwill. It must, in general, be for no more than 12 months and have a geographic scope of no more than the area where the former employee worked.
- A noncompetition agreement must include a garden leave clause or other agreed-upon consideration that is specified in the agreement. A valid garden leave clause, under the statute, will provide for payment of at least 50 percent of the former employee's highest salary during the previous two years.

As this new statute demonstrates, restrictive covenant laws are state specific and dynamic. It is important to ensure your agreements are up to date and compliant within the jurisdictions in which you operate. If you have questions about noncompete agreements or the validity of an electronic signature process, such as clickwrap agreements, contact one of the attorneys below or another member of the noncompete and unfair competition team.

TIMOTHY LOWE

I'm a problem solver for businesses. I provide real-time advice before a dispute escalates into the courtroom and help businesses navigate litigation if it arises. I help business owners protect their most valuable assets – their customer and supplier relationships, their human capital, technology, confidential information, and trade secrets.

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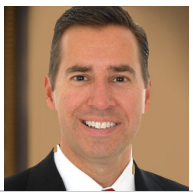

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