

## Critical updates coming to state non-compete laws



Timothy J. Lowe | Wednesday, July 3, 2019

States across the country continue to revise laws to limit the use of non-compete agreements. The trend started last year in Massachusetts, and continues now on both coasts. Critical amendments have been made to Washington, Maryland, and Oregon's laws governing non-compete agreements, and organizations that employ individuals in these states should take the time now to ensure their agreements are in compliance.

### **WASHINGTON**

In Washington, sweeping new legislation will apply to “non-competition covenants,” but does not apply to agreements to not solicit customers or to not use or disclose confidential or trade secret information. And, in what appears to be new approach, the new law permits employees to obtain damages, including attorney fees, if a non-competition covenant is found to violate the new law, or if a court modifies, i.e., blue pencils, the non-competition covenant. Additionally:

- The new law is retroactive. Although it's effective Jan. 1, 2020, the new law will apply to non-compete agreements entered into before that date.
- The new law voids non-compete agreements that are signed by employees who make less than \$100,000 annually or independent contractors who make less than \$250,000 annually.
- The new law declares non-compete agreements lasting 18 months or longer presumptively unreasonable and unenforceable.

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- The new law voids non-compete agreements unless they are provided in writing to the employee prior to accepting an offer of an employment.
  - The new law voids non-compete agreements that are entered into after commencement of employment if no new consideration (i.e., compensation or benefits) is given to the employee.
  - The new law voids non-compete agreements for laid off employees unless the employer compensates the employee with his or her previous base pay for the period of enforcement minus any compensation earned during the period of enforcement.

#### **MARYLAND**

In Maryland, a new law effective Oct. 1, 2019, voids non-compete agreements with employees who earn equal to or less \$15 per hour or \$31,200 annually. The new law does not apply to agreements related to the taking or use of a client list or other proprietary information.

#### **OREGON**

Finally, in Oregon, a new statute effective Jan. 1, 2020, requires that employers must provide employees a signed, written copy of the terms of a non-compete agreement within 30 days after employment is terminated. A strict reading of this language would not permit employers to provide a copy of the agreement on the employee's last day of work, requiring it be provided after. This new law joins Oregon's other, already enacted, requirements:

- Employers must notify new employees that a non-compete agreement is required at least two weeks before the first day of employment.
- For current employees, new non-compete agreements may only be entered into after "subsequent bona fide advancement" of the employee.
- A noncompete agreement is unenforceable unless the employer can prove the employee had access to trade secret or other competitively sensitive confidential business information or if it lasts longer than 18 months.

Companies should remain on alert that other states may follow Washington, Maryland, and Oregon's lead by enacting similar statutes. If you have concerns about your organization's non-compete agreements, contact any member of the non-compete and unfair competition team.



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