

What Minnesota's Imminent Ban on Non-Competes Means for Employers

It's time to revisit your company's employment agreements. Minnesota's employment landscape is on the brink of significant transformation. This week the Minnesota legislature passed a bill banning almost all non-compete agreements. Governor Walz is expected to sign the bill into law in the coming days, making Minnesota the fourth state with such a broad ban. Here are five key points to understand about the proposed law in Minnesota:

Scope

The proposed legislation renders a covenant not to compete contained in a contract or agreement as "void and unenforceable" unless it meets certain narrow exceptions. A "covenant not to compete" is defined as "an agreement between an employee and employer that restricts the employee, after the termination of the employment, from performing:

1. work for another employer for a specified period of time;
2. work in a specified geographical area; or
3. work for another employer in a capacity that is similar to the employee's work for the employer that is party to the agreement."

Crucially, the proposed definition of a covenant not to compete excludes nondisclosure agreements, agreements safeguarding trade secrets or confidential information, non-solicitation agreements, and agreements limiting the use of client lists or customer solicitation. Consequently, these agreements would remain enforceable, providing employers with alternative means to safeguard confidential information.

The proposed law does not impact other provisions in a contract or agreement containing a void or unenforceable covenant not to compete.

Exceptions

The proposed legislation contemplates two circumstances where non-competes may remain enforceable:

1. when agreed upon during the sale of a business; or
2. in anticipation of the dissolution of a business.

Choice of Law; Venue

The proposed legislation prohibits employers from including provisions in an employment agreement that either:

1. require an employee who primarily resides and works in Minnesota to adjudicate a claim arising in Minnesota outside of Minnesota; or
2. deprive the employee of the substantive protection of Minnesota law with respect to any dispute arising in Minnesota.

This provision is applicable to all contracts between employers and employees and is not limited to non-compete agreements.

Attorney's Fees

Under the proposed law, a court can award attorney's fees to an employee who is required to enforce their rights under the law.



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Related Practice Areas

- Labor & Employment
- Trade Secrets, Restrictive Covenants, and Computer Abuse

Not Retroactive

The proposed legislation only applies to contracts and agreements entered into on or after the effective date, which is currently set as July 1, 2023. Existing non-competition agreements would not be covered by this ban and could remain enforceable.

What's Next?

It is advisable to review your current employment agreements and consider how your company will protect its confidential and proprietary information going forward. Though the ban on non-competes is not retroactive, implementing procedures to comply with Minnesota's new non-compete landscape will be necessary, as failure to do so could leave your company at risk to an attorney's fee award. Should you need assistance, Cozen O'Connor's Labor and Employment Department has a team ready to help make the transition as seamless as possible.
