

insights

TYPES NOT MAPPED YET March 04, 2025 | TTR not mapped yet | Howard S. Lavin

Proposed NY Non-Compete Ban

With the Federal Trade Commission's broad ban on non-competes enjoined in August 2024 and likely to be abandoned by the Trump Administration and the Acting General Counsel of the National Labor Relations Board (NLRB) rescinding Biden-era guidance finding that non-supervisor non-competes violate the National Labor Relations Act, efforts to restrict non-competes again will be focused at the state level.

Broad Prohibition of Non-Competes

Against this backdrop, last month, New York State Sen. Sean Ryan introduced legislation S4641A that would amend the New York State Labor Law to add new Section 191-d broadly prohibiting non-competition agreements. Under the bill, employers and their agents, and officers or agents of any corporation, partnership, or limited liability company, would be prohibited from seeking, requiring, demanding or accepting a non-compete agreement from a "covered individual" or "health related professional" after the effective date and non-competes entered into or modified after the effective date of the ban would be "null, void, and unenforceable."

Key Definitions

Section 191-d includes several important definitions:

- "Non-compete agreement" means "any agreement, or clause contained in any agreement, between an employer and a covered individual that prohibits or restricts such covered individual from obtaining employment after the conclusion of employment with the employer included as a party to the agreement."
- "Covered individual" is "any person other than a highly compensated individual who, whether or not employed under a contract of employment, performs or has performed work or services for another person on such terms and conditions that they are, in relation to that other person, in a position of economic dependence on, and under an obligation to perform duties for, that other person."
- "Highly compensated individual" is defined as "any individual who is compensated at an average annualized rate of cash compensation determined by the income listed on the individual's three most recent W-2 statements and, where applicable, K-1 statements" equivalent to or greater than \$500,000 per year. Starting in 2027, this compensation threshold would be adjusted each calendar year based on increases in the Consumer Price Index.
- "Health related professional" includes physicians, physician assistants, chiropractors, dentists, perfusionists, veterinarians, physical therapists, pharmacists, nurses, podiatrists, optometrists, psychologists, occupational therapists, speech pathologists, audiologists, and mental health practitioners licensed under New York law.

Permitted Exceptions

Under the bill, a non-compete for a so-called highly compensated individual is permitted provided that it does not extend longer than one year, such highly compensated individual is paid his or her salary during the enforcement period and meets all other requirements for determining enforceability under New York common law. The bill also permits agreements that (i) establish a fixed term of services and/or exclusivity during employment; (ii) prohibit the disclosure of trade secrets; (iii) prohibit the disclosure of confidential and proprietary client information; and (iv) prohibit the solicitation of clients of the employer, provided that any "such agreement does not otherwise restrict competition in violation of this section." Importantly, these permitted agreements do not address employee non-solicitation provisions.

The bill permits the inclusion and enforceability of non-competes in the sale of goodwill of a business or the sale or disposition of a majority of an ownership interest in a business by a partner of a partnership or a member of a

limited liability company where such person or entity owns 15 percent or more interest in the business. As drafted, the bill seems to impose the one-year duration and payment of salary requirement on the sale of business exception.

Private Right of Action

The bill creates a private cause of action for alleged violations of the non-compete ban, which may be commenced within two years from the later of: "(i) when the prohibited non-compete agreement was signed; (ii) when the covered individual learns of the prohibited non-compete agreement; (iii) when the employment or contractual relationship is terminated; or (iv) when the employer takes any step to enforce the non-compete agreement." Remedies include voiding any such non-compete and "order[ing] all appropriate relief, including enjoining the conduct of any person or employer; ordering payment of liquidated damages; and awarding lost compensation, compensatory damages, reasonable attorneys' fees and costs." "Liquidated damages" will be calculated as an amount not more than \$10,000 per covered individual or health-related professional.

This bill prohibits choice of law and venue provisions that would have the effect of avoiding or limiting the non-compete ban for covered individuals who lived or were employed in New York for at least 30 days immediately preceding the cessation of employment, including "individuals who worked remotely in another state but who reported to a New York worksite or office or who reported to a New York-based supervisor."

Notice

The bill would require employers to advise employees about their "protections and rights" by posting a notice in easily accessible places customarily frequented by employees and applicants. This notice would be developed and provided by the New York Department of Labor.

Effective Date

The bill would go into effect 30 days after becoming law and apply to agreements entered into or modified on or after the effective date.

Next Steps

The bill ([available here](#)) is currently in committee, and we will monitor its progress. Stay tuned!

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