

New York is Nearing a Ban on Non-Compete Agreements

2 min read

Jul 13, 2023

On June 20, 2023, the New York State Legislature voted to pass a bill that will ban almost all non-compete agreements. Currently awaiting Governor Kathy Hochul's signature, the bill prohibits an "employer or its agent, or the officer or agent of any corporation, partnership, limited liability company, or other entity" from seeking, requiring, demanding or accepting a non-compete agreement from a covered individual. Additionally, the bill voids "every contract by which anyone is restrained from engaging in a lawful profession, trade or business of any kind."

The bill, which is set to amend New York Labor Law Section 191(d), defines "non-compete agreement" as "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." A "covered individual" is defined as "any other person who, whether or not employed under a contract of employment, performs 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." The expansive definition of a "covered individual" likely encompasses both employees and independent contractors.

A covered individual can bring a private cause of action within two years of the later of: "(i) when the prohibited non-compete agreement was signed; (ii) when the covered individual learns of 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." Notably, the bill has a prospective application, meaning it does not apply to previously executed agreements, but rather applies to agreements that are entered into or modified on or after the bill's effective date (i.e., 30 days after the bill is signed by the Governor).

The bill does not prevent an "employer to enter into an agreement that establishes a fixed term of service or prohibits disclosure of trade secrets, disclosure of confidential and proprietary client information, or solicitation of clients of the employer that the covered individual learned about during employment." This exception is contingent upon "that such agreement does not otherwise restrict competition in violation of this section." It

should be noted that the bill does not appear to contain an exception for non-compete agreements entered in the sale of business.

Courts have the authority to void any prohibited non-compete agreement and order all appropriate relief, including enjoining an employer's conduct, ordering payment of liquidated damages (not to exceed \$10,000), and award lost compensation, damages, and reasonable attorneys' fees and costs.

Hinshaw & Culbertson LLP is a U.S.-based law firm with offices nationwide. The firm's national reputation spans the insurance industry, the financial services sector, professional services, and other highly regulated industries. Hinshaw provides holistic legal solutions—from litigation and dispute resolution, and business advisory and transactional services, to regulatory compliance—for clients of all sizes. Visit www.hinshawlaw.com for more information and follow @Hinshaw on LinkedIn and X.

Topics

New York, Non-Compete