

## DC Council Passes Bills Amending Non-Compete Ban

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On July 12, 2022, the Council of the District of Columbia voted to amend the District of Columbia's Ban on Non-Compete Agreements Amendment Act of 2020 (the "Act"). Implementation of the Act has been delayed on several occasions and is currently set to occur on October 1, 2022.

As ArentFox Schiff previously [outlined](#), the Council initially passed the Act on December 15, 2020. If implemented, the Act would largely ban employers from requiring their DC employees to sign non-compete agreements. Other key provisions of the Act include:

- Employers must provide their employees with a written notice regarding the ban on non-compete agreements.
- Employers may not retaliate against an employee for refusing to sign a non-compete, asking or complaining about the existence, applicability, or validity of a non-compete provision, or requesting the employer provide the written notice language required by the Act.
- A carve-out for agreements restricting employees from disclosing employer confidential information, and for non-compete agreements entered into in conjunction with the sale of a business.

During its June 28 session, the Council passed the Act on first reading. Additionally, Councilmember Pinto offered an amendment to lower the Act's \$250,000 compensation threshold to \$150,000, which would permit the use of non-compete agreements with employees whose annual compensation is \$150,000 or higher. The amendment makes changes to the definition of "compensation" to include unrestricted stocks and "other payments provided on a regular or irregular basis" to provide a more accurate reflection of the true amount an employee is earning in their job. Councilmember Pinto's amendment overrode a prior amendment that had been proposed by Councilmember Silverman, which would have reduced the salary threshold to \$200,000 annually.

On July 12, the Council met again and passed the Act, along with Councilmember Pinto's amendment, on second reading. The Act is now headed to Congress for a mandatory legislative review period of 30 Congressional working days, and will take effect once that review period has concluded. However, the Council also passed an identical emergency bill at the July 12 session, which will take effect as soon as it is signed by the Mayor. The emergency bill will remain in effect long enough to bridge the gap until the permanent bill takes effect at the end of the Congressional review period.

The Act will not impact non-compete agreements that are signed prior to October 1, 2022. However, moving forward, employers should immediately review and revise their existing employment agreements and policies to come into compliance with the Act.

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