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Oregon Modifies Noncompete Law for 2020

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On May 14, 2019, Oregon Governor Kate Brown signed House Bill (HB) 2992, which imposes a new burden on employers that want to have enforceable noncompetition agreements with their Oregon employees. For any noncompetition agreement entered into on or after January 1, 2020, employers must provide employees with a signed, written copy of the terms of the noncompetition agreement within 30 days after the termination of employment.

Based on a strict reading of this new limitation, it would not be sufficient for an employer to provide a written copy of a noncompetition agreement to an employee on or before the employee's last day of work—for example, in an exit interview. The law specifically requires an employer to provide a copy "within 30 days *after* the date of the termination of the employee's employment." (Italics added.)

This new post-termination-notice requirement joins several existing limitations on noncompetition agreements with Oregon employees in ORS 653.295. Those existing limitations include (among other things) the need to inform the employee in a written employment offer received by the employee at least two weeks before the

first day of employment that a noncompetition agreement is required as a condition of employment. In other words, beginning in 2020, employers will have to worry about meeting both a *pre*-employment and *post*-employment notice requirement to ensure that noncompetition agreements are not voidable by employees.

Other existing limitations under ORS 653.295 include the following: The longest enforceable period of a noncompetition agreement under ORS 653.295 is 18 months from the date of separation, and a noncompetition agreement is enforceable only against (1) employees exempt from minimum wage and overtime under Oregon law (e.g., managerial, executive, salaried employees); (2) employees who have access to a "protectable interest" of the employer (e.g., access to trade secrets or competitively sensitive commercial information); and (3) employees whose annual salary and commissions, at the time of their separation, exceed the median income for a family of four, as determined by the U.S. Census Bureau.

As a reminder, the limitations in ORS 653.295, including the new post-termination-notice requirement imposed by HB 2992, do not apply to all types of restrictive covenants. The law applies only to "noncompetition agreements," which are defined as agreements "under which the employee agrees that the employee, either alone or as an employee of another person, will not compete with the employer in providing products, processes, or services that are similar to the employer's products, processes or services for a period of time or within a specified geographic area after termination of employment." The law does not apply to confidentiality agreements or to a "covenant not to solicit employees of the employer or solicit or transact business with customers of the employer."

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