

THE
NATIONAL LAW REVIEW

Drafting Employment Agreements to Comply with New State Laws and Pending Legislation Restricting Enforceability of Non-Competes

Wednesday, June 26, 2019

In the last year, [Maryland](#), [Massachusetts](#), [Oregon](#), and [Washington State](#) passed game-changing laws that restrict the enforceability of provisions between an employer and an employee that limit the employee's post-termination ability to work in competition with the employer. Numerous other state legislatures, including Missouri's, New Hampshire's, and New Jersey's, recently have considered similar legislation.

Employers can get ahead of this trend by implementing the following measures when preparing and presenting non-compete agreements to new and existing employees:

- Do not ask low-wage or junior-level employees who do not have important client relationships or access to company trade secrets to sign non-competes.
- When presenting a non-compete agreement (and it must be in writing), provide the individual with at least 10 days' notice and an opportunity to review the agreement with counsel.
- Provide compensation to the employee during any non-compete period. For a non-compete presented to an existing employee, offer more consideration than mere continued employment.
- Limit the duration of any non-compete to one year at the most, and preferably less.
- If including a choice of law or forum selection clause, specify the state where the employee works or resides.
- Keep the scope of the non-compete restriction reasonable by limiting it to the specific industry, job duties, and/or geographic area in which the employee worked for the employer.
- Advise departing employees of their ongoing non-compete obligations.

While no guarantee of enforcement, adherence to these measures will increase the likelihood that a non-compete will be upheld if challenged in court or arbitration.

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