

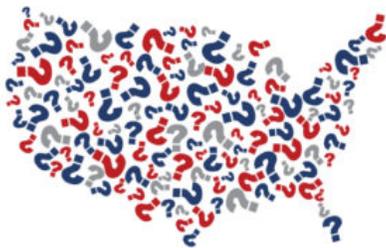
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## Which States Are Likely to Enact Laws Restricting Non-Compete Agreements in 2017?

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In 2016, several states enacted laws that were designed, in varying degrees, to limit non-competes, including Illinois, Utah, Connecticut and Rhode Island. Which states are most likely to do the same in 2017?

**Idaho:** A bill proposed in January, [House Bill 61](#), would amend an existing Idaho law that has made it easier for employers to enforce non-competes against the highest paid 5% of their employees and independent contractors. The bill would alleviate the burden placed on such “key” personnel by the existing law by, among other things, eliminating the rebuttable presumption of irreparable harm to the employer that is automatically established if a court finds that the key employee or independent contractor is in breach of his or her non-compete.



**Maryland:** On January 27, 2017, Maryland lawmakers proposed [House Bill 506](#), which would render null and void any non-compete provision in an employment contract that restricts the ability of an employee who earns equal to or less than \$15.00 per hour or \$31,200

annually to enter into employment with a new employer or to become self-employed in the same or similar business. The bill was adopted by Maryland’s House and is now in its Senate.

**Massachusetts:** On January 20, 2017, lawmakers proposed Bill [SD.1578](#), which would impose significant limitations on the reach of non-competes in Massachusetts. If enacted, the proposed law would, among other things: limit the temporal scope of non-compete agreements to 12 months from the date of termination of employment (or 2 years if the employee has breached his or her fiduciary duty or has unlawfully taken property belonging to the employer); prohibit non-competes against certain categories of workers, including nonexempt employees, students, employees terminated without cause, and employees 18 years or younger; and require non-competes to be supported by consideration independent from the continuation of employment.

**Nevada:** A bill proposed in February, [A.B. 149](#), would make a non-compete “void and unenforceable” in Nevada if it prohibits an employee from seeking employment with or becoming employed by a competitor for a period of more than 3 months after the employee’s termination, which is an extremely short duration in the non-compete realm. Willful violators of the law would be guilty of a gross misdemeanor punishable by a fine of not more than \$5,000; in addition, the Nevada Labor Commissioner may impose an administrative penalty of up to \$5,000 for each such violation.

**New York:** On October 25, 2016, New York Attorney General Eric Schneiderman [announced](#) that he planned to introduce legislation in 2017 that would, among other things, prohibit the use of non-competes for low-wage workers and require employers to pay employees additional consideration if they sign non-compete agreements.

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While he has not yet introduced this bill, Schneiderman has given no indication that he will backtrack from his 2016 announcement.

**Washington:** After a bill that would have, among other things, limited non-competes to one year faced strident opposition from businesses, Washington legislators penned a more watered-down version of a bill designed to make non-compete agreements more transparent. Specifically, Bill [HB 1967](#), which passed the Washington House on March 8 and is now in the Senate, requires that all the terms of a non-compete contract be disclosed in writing before the employee signs the contract. While this revised bill is far less restrictive than other proposed bills, if enacted, it will nevertheless be beneficial to Washington employees.

**Stay Tuned:** The Maryland and Washington bills have the most traction, as they have already passed the states' Houses. Nevertheless, at this point it is simply too early to predict whether the law proposed in those states or elsewhere will garner enough support to clear the necessary legislative and executive hurdles to be enacted. In the meantime, employers across all states should stay tuned and continue to draft narrowly tailored and enforceable non-competes.

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