

WEBSTER, CHAMBERLAIN & BEAN, LLP | NONPROFIT ALERT

EMPLOYEE NON-COMPETE AGREEMENTS, ANTI-MOONLIGHTING POLICIES SOON TO BE VOID IN D.C.

The recently passed D.C. Ban on Non-Compete Agreements Amendment Act of 2020 (the “Act”) is amongst the broadest in the country and prohibits employers from barring any employee from working for competitors not only after their employment ends, but also during their employment.¹ The Act can be found [here](#).

The Act is far-reaching by voiding all covered non-compete provisions entered into after the Act takes effect; however, pre-existing non-compete agreements will continue to be enforceable. The Act’s projected effective date is March 19, 2021.

Act Applies to All DC Employers and Employees

The Act defines “employer” very generally and includes nonprofit organizations operating in Washington, D.C. The Act also defines “employee” broadly to include any individual who performs work in D.C. and any prospective employee who an employer reasonably anticipates will perform work on behalf of the employer in D.C. The definition excludes volunteers and lay members elected or appointed to office within the discipline of any religious organization and engaged in religious functions, among others.

Definition of Non-Compete Agreement

A non-compete agreement is defined in the Act as “a written agreement between an employee and an employer that prohibits the employee from being simultaneously or subsequently employed by another person, performing work or providing services for pay for another person, or operating the employee’s own business.”² Confidentiality agreements that protect an employer’s trade secrets and other proprietary information (i.e., client lists) and business purchase agreements are excluded.

Prohibitions on Outside Work Voided

The Act also prohibits employers from having workplace policies that do not allow employees to be employed by another or perform work or services for pay for another or operate their own businesses. Employers should review their handbooks and policies for non-compete and moonlighting provisions.

There are ways for employers to protect themselves, however. Confidentiality and nondisclosure requirements can be strengthened. An employer can prohibit employees from performing services for any other company or organization during their regular work hours for the employer

¹ The Act is currently in the required 30-day Congressional review period before it can go into effect. No Congressional opposition is expected.

² Notably, the Act does not address non-solicitation agreements.

and from using the employer's property and systems in connection with outside work. It may also be permissible for an employer to require employees to disclose any other work activity.

No Retaliation

The Act includes a retaliation prohibition that makes it illegal for employers to take or threaten any adverse action against employees who refuse to agree to or fail to comply with an unlawful non-compete provision or workplace policy.

Failure to Comply

Failure to comply with the new non-compete rules may lead to civil liability of \$350-\$1,000 for each violation of the non-compete or notice provisions, and the D.C. Government may assess fines of \$1,000-\$2,500 for any instances of retaliation.

Notice Requirements to Employees

The Act contains several notice requirements to employees. Covered employers are required to provide the following written notice to their employees: “[N]o employer operating in the District of Columbia may request or require any employee working in the District of Columbia to agree to a non-compete policy or agreement, in accordance with the Ban on Non-Compete Agreements Amendment Act of 2020.” Covered employees must receive this written notice within 90 days after the law's effective date. The notice must also be provided to all new employees within seven calendar days of their start date, and within 14 calendar days of any covered employee's written request.

Nonprofit organizations with employees located in Washington, D.C. should evaluate their workplace policies and employment agreements.

Similar Non-Compete Restrictions in Maryland and Virginia

The new non-compete law in Washington, D.C. is similar, albeit more restrictive than laws in both Maryland and Virginia which enforce the non-compete restriction against low-wage employees.

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