

## Non-Compete Agreements Face Renewed Legislative Challenge in New York, by Keith J. Gutstein, Esq., and Eric Zenzerovich, Esq., 11-6-2025

Non-compete agreements are once again in the spotlight in New York with proposed legislation that would largely prohibit most non-compete agreements, with limited exceptions.

SB 4641, which has passed the Senate, seeks to amend the NY Labor Law by adding Section 191-d, prohibiting employers from enforcing most non-compete agreements except for certain instances, including highly compensated individuals earning \$500,000 or more per year or in the context of the sale of a business. It would also ban non-competes for all "health related professionals," as defined in the statute, with certain exceptions, regardless of their income level.

Generally speaking, a non-compete agreement prohibits an employee from working for a competitor or opening a competing business, typically for a certain period of time after an employee leaves a job.

This is not the first time legislation taking aim at non-competes has been introduced. In 2023, a bill that would have broadly banned non-competes was proposed but ended up being vetoed by NY Governor Kathy Hochul. Back then, Governor Hochul indicated that she did not support a complete ban on non-compete agreements and showed a willingness to consider a more nuanced approach such as applying salary thresholds and exemptions for business sales.

### Highly Compensated Individuals

Highly compensated individuals are defined as those making \$500,000 or more per year based on their three most recent W-2 and, where applicable, K-1 statements.

Beginning in 2027, the threshold will be adjusted each calendar year based on the increase, if any, in the Consumer Price Index for all Urban Consumers for NYS, with the base year of 2026.

Any non-compete that is permissible and enforceable must still comply with the NY common law, including but not limited to the following parameters:

- it is reasonable in time, geography, and scope;
- it does not impose an undue hardship on the employee;
- it does not harm the public;
- it is necessary to protect the employer's legitimate business interests; and
- its restrictions are no greater than necessary to protect the legitimate business interest of the employer

### Key Provisions

1. The bill would not apply retroactively, meaning contracts entered into before the law is enacted would still be valid.
2. The bill provides an exception in the sale of a business or disposition of a majority of an ownership interest in a business by a partner of a partnership, a member of a limited liability company, or an entity in cases where:

- any such partner of a partnership or member of a limited liability company owns at least a fifteen percent interest in such partnership or limited liability company;
- or any such person or entity owns fifteen percent or more ownership interest in a business.

3. Employers are not restricted from entering into agreements with a prospective or current covered individual or health related professional in certain circumstances, including those that would prohibit the disclosure of trade secrets and the disclosure of confidential and proprietary client information.

4. Employers must post a workplace notice informing employees of their protections and rights that will be developed by the NYSDOL.

5. The bill allows for a private right of action for employees to challenge non-competes that violate the law. Employees will have a two-year window to bring an action when:

- a prohibited non-compete agreement is signed;
- the employee learns of the prohibited non-compete agreement;
- the employment or contractual relationship is terminated; or the employer takes any step to enforce the non-compete agreement.

6. Courts will have jurisdiction to void any non-compete that violates the law and the employee can be awarded lost compensation, compensatory damages, liquidated damages (capped at \$10,000 per individual), and attorneys fees and costs.

#### Implications for Employers

If enacted, this legislation would significantly impact the enforceability of non-compete agreements in New York. Employers should consider:

- **Reviewing Existing Agreements:** Assess current non-compete clauses to determine their compliance with the proposed law.
- **Updating Employment Contracts and Severance Agreements:** Consider revising contracts and agreements to align with the new legal landscape, particularly concerning highly compensated individuals and health-related professionals.
- **Training for HR Personnel:** Human resources personnel should be trained on the new requirements to ensure proper implementation and to avoid potential legal challenges.
- **Preparing for Enforcement Changes:** Understand the potential for increased litigation and the associated risks and costs.
- **Post Visible Notice:** The proposed law requires that employers post a notice to employees detailing how the new law affects their rights and protections.

Kaufman Dolowich will continue to monitor developments.

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