

Trade Secrets & Employee Mobility

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Washington State's New Law Limits Enforceability of Noncompetition Agreements

By David J. Clark on May 9, 2019



Non-competes are going to be harder to enforce in Washington State. On May 8, 2019, Governor Jay Inslee signed the “Act Relating to Restraints, Including Noncompetition Covenants, on Persons Engaging in Lawful Professions, Trades or Businesses,” which was passed by both houses of the state legislature in April.

The **new law** will become effective January 1, 2020, and will render unenforceable non-competition provisions signed by employees earning less than \$100,000 and independent contractors earning less than \$250,000 annually. Other important provisions of the law are as follows:

- Any non-competes exceeding 18 months will be considered unreasonable and unenforceable.
- The law will apply to any claims asserted on or after January 1, 2020 regarding non-competition agreements, even if the agreement was signed prior to that date.
- Only non-competition provisions are targeted by the law, not provisions regarding solicitation of clients or co-workers, confidentiality or non-disclosure of trade secrets agreements, or covenants entered in connection with the sale of business goodwill or an ownership interest.
- Employers must disclose the terms of a non-compete to an employee or contractor prior to acceptance of employment.
- Employers asking existing employees to sign new non-competes must provide independent consideration, e., some additional pay or benefit to which the employees are not already entitled.
- Employers wishing to enforce non-competes against laid-off employees must pay full base salary throughout the non-compete period (minus compensation earned by the employee through other employment).
- Employers seeking to enforce non-compliant non-competes can be sued by the employee or the Attorney General, and be ordered to pay the greater of actual damages or \$5,000, plus attorneys' fees and costs.
- Out-of-state forum selection clause will not be enforced against Washington-based employees or contractors, no matter where the employer is based.

These are big changes to current Washington law governing non-competes. Businesses with employees or independent contractors in Washington should evaluate all non-competition agreements they may have with such individuals, and take steps to be in compliance with the law by the end of this year.

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