

## Hawaii Bans Non-Compete and Non-Solicit Clauses in High-Tech Employment

Date: 7.10.2015

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Departing from the state's normally pro-employer laws and judicial attitudes regarding non-compete covenants, a new law bars high-tech companies in Hawaii from requiring their employees to enter into "non-compete" and "non-solicit" agreements as a condition of employment. The new law, Act 158, went into effect on July 1, 2015.

Act 158 not only allows high-tech workers in Hawaii to switch allegiance and jump to employment with competitors of their current employer, but also to openly solicit their co-workers to do the same. Limitations on solicitation of *clients* are not addressed in the new law and, thus, employers may continue to include such in a client non-solicitation clause.

The new law applies to Hawaii employers in the technology businesses "that derive[] a majority of [their] gross sales from the sale or license of products or services resulting from its software development or information technology development, or both." Such employers cannot require employees to execute employment agreements that:

prohibit an employee from working in a specific geographic area for a specific period of time after leaving employment; or

prohibit an employee from soliciting co-workers after leaving employment.

Act 158 does not change existing state and federal laws that allow companies to prohibit their workers from departing from a job with trade secrets that they use to compete against their former employers. Such "trade secret" prohibitions can extend for a reasonable period of time to protect the employer without imposing undue hardship on the employee.

A "grandfathering" clause protects existing employment agreements of technology companies with "non-compete" and "non-solicit" clauses. However, if the agreements are amended, revised, or extended, it is unclear whether such clauses will be void.

Hawaii courts traditionally have been zealous enforcers of non-compete agreements and the state Supreme Court has held that a three-year ban is not unreasonably long. Therefore, Act 158 is a significant departure for the state.

Jackson Lewis attorneys are available to assist Hawaii employers with Act 158 mitigation, compliance, and equal protection challenges to enforceability.

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Non-Competes and Protection Against Unfair Competition

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## [contact](#)

Andrew L. Pepper

Wayne S. Yoshigai

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