

OUR INSIGHTS

Oregon Tightens Restrictions on Noncompetition Agreements

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Oregon strictly regulates the use of noncompetition agreements by statute, generally limiting them to (a) exempt employees earning more than the median income for a family of four (approximately \$74,000 currently), and (b) conditioning enforceability on a “bona fide advancement” or an employer informing an employee about the agreement “in a written employment offer received by the employee at least two weeks before the first day of the employee’s employment.” Even when enforceable under current law, the statute places a two-year cap on the duration of the restriction.

On June 16, 2016, Governor Kate Brown signed [House Bill 3236](#), which reduces the maximum enforceable duration of a noncompetition agreement to just 18 months. The revised law will take effect January 1, 2016, and will only apply to agreements entered on or after that date.

Importantly, this does not affect covenants not to solicit employees or not to solicit or accept business from former customers. Oregon law continues to treat noncompetition agreements differently than nonsolicitation agreements. Unlike noncompetition agreements, nonsolicitation agreements may be enforced regardless of an employee’s exempt status and compensation, and may be enforceable beyond 18 months when warranted. Critically, however, a nonsolicitation agreement must be carefully drafted to avoid being categorized as a more strictly regulated noncompetition agreement.

As a result of this new law, employers using noncompetition agreements in Oregon should (1) ensure the restrictive period does not exceed 18 months from the date of termination for any agreement entered in 2016, and (2) assess whether a covenant not to solicit can achieve the same legitimate goals with a greater chance of being enforced.

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Sean Driscoll represents employers large and small in all aspects of employment litigation in federal and state courts, as well as before the EEOC and state agencies and in private and industry arbitrations. He has defended claims of discrimination and harassment, retaliation and whistleblowing, disability and leave law violations, and a wide-variety of wage & hour violations, including multi-plaintiff and class action lawsuits. In addition to litigation, Sean regularly advises employers on...
