

# Trade Secrets & Employee Mobility

News, Updates, and Commentary on Trade Secret and Employee Mobility Developments

## 10,000 Lakes and ... No Noncompetes? Minnesota Passes Law Banning Non-Competes Effective July 1, 2023

By David J. Clark & Erik W. Weibust on May 26, 2023



**As expected**, on May 24, 2023, Governor Tim Walz signed a new law banning noncompete agreements in Minnesota. The ban will be effective for such agreements entered on or after July 1, 2023.

By enacting the Omnibus Jobs, Economic Development, Labor and Industry appropriations bill (**MN SF 30035**), Minnesota becomes only the fourth state (along with California, Oklahoma and North Dakota)

to ban noncompetes.

The new law renders void and unenforceable all covenants not to compete entered by employees or independent contractors on or after **July 1, 2023**. The only exceptions are noncompetes in agreements relating to the sale or dissolution of a business. A “covenant not to compete” is defined as excluding non-disclosure and non-solicitation provisions, and the law states that no other provisions in an agreement containing a noncompete shall be affected. The law also prohibits employers from requiring employees to agree to clauses designating choice of law and venue of any state other than Minnesota. Employees seeking to enforce the noncompete ban will be allowed to recover reasonable attorneys’ fees.

Employers with employees or independent contractors in Minnesota should take action to ensure that their agreements with such individuals comply with this new law, going forward from July 1.

For those interested, the relevant text of the new law is as follows:

**Section 1. [181.988] COVENANTS NOT TO COMPETE VOID IN EMPLOYMENT AGREEMENTS; SUBSTANTIVE PROTECTIONS OF MINNESOTA LAW APPLY.**

Subdivision 1.

**Definitions.**

(a) “Covenant not to compete” means an agreement between an employee and employer that restricts the employee, after termination of the employment, from performing:

(1) work for another employer for a specified period of time;

(2) work in a specified geographical area; or

(3) work for another employer in a capacity that is similar to the employee’s work for the employer that is party to the agreement.

A covenant not to compete does not include a nondisclosure agreement, or agreement designed to protect trade secrets or confidential information. A covenant not to compete does not include a nonsolicitation agreement, or agreement restricting the ability to use client or contact lists, or solicit customers of the employer.

(b) “Employer” means any individual, partnership, association, corporation, business, trust, or any person or group of persons acting directly or indirectly in the interest of an

employer in relation to an employee.

(c) “Employee” as used in this section means any individual who performs services for an employer, including independent contractors.

(d) “Independent contractor” means any individual whose employment is governed by a contract and whose compensation is not reported to the Internal Revenue Service on a W-2 form. For purposes of this section, independent contractor also includes any corporation, limited liability corporation, partnership, or other corporate entity when an employer requires an individual to form such an organization for purposes of entering into a contract for services as a condition of receiving compensation under an independent contractor agreement.

Subd. 2.

**Covenants not to compete void and unenforceable.**

(a) Any covenant not to compete contained in a contract or agreement is void and unenforceable.

(b) Notwithstanding paragraph (a), a covenant not to compete is valid and enforceable if:

(1) the covenant not to compete is agreed upon during the sale of a business. The person selling the business and the partners, members, or shareholders, and the buyer of the business may agree on a temporary and geographically restricted covenant not to compete that will prohibit the seller of the business from carrying on a similar business within a reasonable geographic area and for a reasonable length of time; or

(2) the covenant not to compete is agreed upon in anticipation of the dissolution of a business. The partners, members, or shareholders, upon or in anticipation of a dissolution of a partnership, limited liability company, or corporation may agree that all or any number of the parties will not carry on a similar business within a reasonable geographic area where the business has been transacted.

(c) Nothing in this subdivision shall be construed to render void or unenforceable any other provisions in a contract or agreement containing a void or unenforceable covenant not to compete.

(d) In addition to injunctive relief and any other remedies available, a court may award an employee who is enforcing rights under this section reasonable attorney fees.

Subd. 3.

**Choice of law; venue.**

(a) An employer must not require an employee who primarily resides and works in Minnesota, as a condition of employment, to agree to a provision in an agreement or contract that would do either of the following:

(1) require the employee to adjudicate outside of Minnesota a claim arising in Minnesota;  
or

(2) deprive the employee of the substantive protection of Minnesota law with respect to a controversy arising in Minnesota.

(b) Any provision of a contract or agreement that violates paragraph (a) is voidable at any time by the employee and if a provision is rendered void at the request of the employee, the matter shall be adjudicated in Minnesota and Minnesota law shall govern the dispute.

(c) In addition to injunctive relief and any other remedies available, a court may award an employee who is enforcing rights under this section reasonable attorney fees.

(d) For purposes of this section, adjudication includes litigation and arbitration.

(e) This subdivision applies only to claims arising under this section.

**EFFECTIVE DATE.**

This section is effective July 1, 2023, and applies to contracts and agreements entered into on or after that date.

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