

Washington State Is Making Worker-Friendly Amendments to Its Noncompete Statute

Trade Secrets & Employee Mobility

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Categories: Non-Compete Agreements

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Washington State is making a few important amendments to its existing noncompete statute. The amendments go into effect on June 6, 2024.

Back on January 1, 2020, Washington state enacted a noncompete statute that set limits on the use of noncompetition agreements, including the following:

- Non-competition provisions for workers who earn less than certain annual thresholds: (currently \$120,559.99 for employees and \$301,399.98 for independent contractors) are unenforceable.
- Non-competes exceeding 18 months are unenforceable.
- Excluded from the definition of “noncompetition covenant” are 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.

- 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.

The amendments being enacted this year are intended to favor workers, and include:

- Washington's noncompete statute's provisions "facilitating workforce mobility and protecting employees and independent contractors need to be liberally construed and exceptions narrowly construed."
- "Noncompetition covenant" is defined to include "agreements that directly or indirectly prohibit the acceptance or transaction of business with a customer."
- The "sale of business" exception is limited to transactions where the person signing the covenant purchases, sells, acquires or disposes of an interest representing one percent or more of the business.
- The customer non-solicitation exception is limited to "current" customers.
- The time for disclosing the terms of a noncompete covenant is before "initial oral or written" acceptance of an offer.
- Any provisions in a noncompete agreement that allow or require the application of choice of law principles or substantive law of any jurisdiction other than Washington are void.
- A plaintiff bringing a cause of action under Washington's noncompete statute is no longer be required to be a party to the noncompete agreement.

- A cause of action can be brought with respect to noncompetition covenants signed before January 1, 2020 if the covenant is being “explicitly leveraged.”

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 June 6, 2024.

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