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Utah Passes Bill Regulating Non-Competes



By **Matt Durham** on March 10, 2016

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After heated debate between legislators and among the business community, the Utah state legislature has passed [HB 251](#), the Post-Employment Restrictions Act. As passed, the Act prohibits “post-employment restrictive covenants” with restrictive periods longer than one year. The Act defines a “post-employment restrictive covenant” (also identified in the statute as a “covenant not to compete” or “non compete agreement”) as

an agreement, written or oral, between an employer and employee under which the employee agrees that the employee, either alone or as an employee of another person, will not compete with the employer in providing products, processes, or services that are similar to the employer’s products, processes, or services.

The Act prohibits employers and employees from entering into post-employment restrictive covenants of more than one year and declares such agreements void. The Act specifically requires that non-competition must comply with other requirements for enforceability that have developed under common law. Finally, the Act provides that employers who unsuccessfully attempt to enforce such agreements are liable for actual damages, court or arbitration costs, and attorney fees.

The Act contains express carve-outs for confidentiality agreements, non-solicitation agreements, severance agreements, and non-compete agreements in exchange for value given in connection with the sale of a business. Unlike an earlier version of the bill, the Act only applies to employers with 20 or more employees. The new law applies to non-competition agreements entered into on or after May 10, 2016. The Act as passed does not include some provisions that had been included in earlier versions of the bill. It does not, for example, require specific additional consideration to be provided for non-competition agreements. Nor does it contain the provision making non-competition agreements inapplicable to ordinary, rank-and-file employees in a “common calling.”

Non-competition agreements have been widely used by Utah employers to protect their business relationships, investment in employee training, and good will. Any business with 20 or more Utah employees should ensure that any non-competition agreements it enters into in the future complies with the new law. A business should also carefully consider attempts to enforce such agreements.

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