

Colorado Latest in Line of Jurisdictions Limiting Non-Compete Enforceability

On the heels of Illinois' [new non-compete restrictions](#), effective January 2022, Colorado recently became the latest state to make enforcing noncompetition agreements against employees more difficult for employers. Nationally, the state is one of several jurisdictions that has either recently passed or is considering legislation limiting such agreements in various ways.

Colorado Law Changes

Beginning March 1, 2022, any violations of Colorado's non-compete statute may now constitute a Class 2 misdemeanor, with a penalty of \$750 or up to 120 days imprisonment per violation, or both.

Colorado law prohibits non-compete agreements with employees except in certain circumstances, including when agreements (1) are made for the recovery of expenses incurred in educating and training employees who were employed for less than two years; or (2) are made with executive and management personnel, and their professional staff and officers. Further, it prohibits any covenants entered into through the use of force, threats or "other means of intimidation" to prevent an individual from engaging in any lawful occupation.

Employers with employees or operations in Colorado should require non-compete agreements only with employees who fall squarely into one of the statutory exceptions. It remains to be seen how courts will interpret "other means of intimidation," which may make an agreement unlawful and subject an employer to penalties.

Potential Changes In New York

With competing bills pending in the New York legislature, New York may be the next state to restrict non-compete agreements. The first, Assembly Bill 2192, would prohibit employers from requiring low-wage employees to execute non-compete covenants. The bill would also require employers to notify all potential employees prior to hiring of any requirement to enter into a non-compete agreement. Second, Senate Bill 6425 would prohibit non-compete agreements for all employees and authorizes liquidated damages up to \$10,000 against employers who violate the law. As of this writing, both bills remain in committee.

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Other Recent and Upcoming Changes

Colorado and New York are not the only jurisdictions considering changes to the laws governing post-employment restrictive covenants.

- Effective April 1, 2022, Washington D.C. will ban non-compete agreements with most employees (it does not affect non-solicitation agreements, confidentiality agreements or restrictions where a business is being sold);
- Nevada began prohibiting “non-competition” agreements—those, which, after termination “prohibit[] the employee from pursuing a similar vocation in competition with or becoming employer by a competitor of the employer”—with certain hourly-wage workers, effective October 1, 2021 (it likely does not affect other types of restrictive covenants); and,
- Starting January 1, 2022, Oregon limited the duration of non-competition restrictions to 12 months and established a minimum salary threshold of \$100,533 (adjusted annually) for employees entering into non-compete agreements (it does not affect other types of restrictive covenants).

What Employers Should Do Now

The trend across the country restricting the use of non-compete agreements does not appear to be slowing down. There have been changes in non-compete laws in at least 17 states in the last five years with the potential for more changes to come, including at the federal level.

Employers should review any form agreements to ensure they are enforceable in relevant jurisdictions, including those where they have operations, where employees reside and/or work remotely, and based on any choice of law provisions in their agreements.

If you have any questions about non-compete or non-solicitation agreements, please contact [Chris Banaszak](#), [Rob Driscoll](#), [Michael Gentry](#) or your Reinhart attorney.

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