

## New York Set to Ban Non-Compete Covenants

The New York legislature passed a bill on June 20, 2023, that would prohibit all employee non-compete covenants prospectively; it presently awaits Gov. Kathleen Hochul's approval. The legislation will become effective 30 days after Hochul signs it into law, which she is expected to do. Hochul has the ability to modify the legislation before signing, so it may change before a final version is enacted.

If Hochul signs the bill as drafted, the new law will prohibit employers from seeking or requiring any "covered individual" from entering or modifying a non-compete covenant and would void any such covenants entered or modified after the legislation's effective date. The bill is prospective only and will not affect covenants entered before the effective date.

### Definitions

The bill broadly defines both non-competes and covered individuals:

- Non-compete Covenant – "any agreement, or clause contained in any agreement, between an employer and a covered individual that prohibits or restricts such covered individual from obtaining employment, after the conclusion of employment with the employer included as a party to the agreement."
- Covered Individual – "any other person who, whether or not employed during a contract of employment, performs work or services for another person on such terms and conditions that they are, in relation to that other person, in a position of economic dependence on, and under an obligation to perform duties for, that other person."

### Exceptions

The bill identifies some exceptions to the ban. Employers may continue to enter into contracts for a fixed period of time; trade secrets covenants; confidentiality covenants; and non-solicitation of customers that the covered individual learned about during employment *if* such covenants do not "otherwise restrict competition."

The legislation only applies to covenants that restrict an employee's ability to

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engage in a new job after employment ends, which suggests that the use of garden leave provisions would still be lawful. Furthermore, the definition of “covered individuals” suggests that non-compete covenants in the sale of a business context are not affected because the bill is limited to those individuals who provide services to an entity and who economically rely on that entity.

## **Enforcement**

The bill grants individuals a private right of action and establishes a two-year statute of limitations. However, the statute of limitations does not begin to run until the later of: (1) when the non-compete was signed; (2) when the covered individual learned of the non-compete; (3) when employment ended; or (4) when the employer took steps to enforce the non-compete.

The bill empowers courts to void non-compete covenants and award injunctive relief, lost compensation, damages, reasonable attorneys’ fees and costs, and liquidated damages of up to \$10,000.

## **What Employers Should Do Now**

Employers should continue to monitor this New York bill. If Gov. Hochul signs it, employers will have 30 days to act before it goes into effect. In the meantime, employers should review all existing restrictive covenants and consider taking steps to update them to ensure enforceability, as may be necessary, before the law takes effect. For anyone hired before the law takes effect, it will be important to promptly secure any desired covenants in advance of the effective date.

If you have any questions about the coming changes to New York law, please contact [Matt DeLange](#), [Lynn Stathas](#) or your Reinhart attorney.

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