

# Soon-to-Be Illinois Law Will Prevent Many Non-Compete and Non-Solicitation Agreements With Employees

Over Memorial Day weekend, the Illinois Legislature unanimously passed a bill that would make significant changes to Illinois law regarding non-compete and non-solicitation agreements. If signed into law by Gov. Pritzker, which is widely anticipated, it will become effective and apply to any such agreements entered on or after, January 1, 2022. It will not affect agreements entered before January 1, 2022. The new bill would ban non-compete and non-solicitation agreements outright for many employees and place new conditions on employers seeking to enter or enforce such agreements.

Changes under the new bill:

- A ban on non-compete agreements with Illinois employees who earn \$75,000 per year or less and on customer and co-worker non-solicitation agreements with employees who earn \$45,000 per year or less. Both income thresholds are indexed to inflation.
- A ban on non-compete and non-solicitation agreements for construction tradespeople and public employees in Illinois.
- A requirement that Illinois employers a) allow employees 14 days to review a proposed non-compete or non-solicitation agreement; and b) advise employees in writing to seek counsel to review such agreements.
- An award to employees of their attorney's fees, along with other available relief, if an employer seeks to enforce an agreement and a court rules that it is unenforceable.

Further, in order for an employer to enforce a non-compete or non-solicitation agreement, either the employee would need to remain employed for at least two years after signing the agreement or the employer must offer the employee "additional professional or financial benefits" in exchange for signing the agreement at the outset. Courts will likely need to interpret what type of "professional or financial benefits" will satisfy this requirement.

## Exclusions and Exceptions

The new bill would not apply to confidentiality agreements, trade secret and

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invention assignment agreements. It would also exempt garden leave clauses and non-compete agreements entered in connection with the sale or purchase of a business. The bill *would apply* to “no moonlighting” agreements, but it does not restrict an employer from having a “no moonlighting” policy in an employee handbook.

## **What Employers Should Do Now**

Because the bill is likely to become law, Illinois employers should review and update any form agreements before January 1, 2022. They may also want to consider entering into new non-compete or non-solicitation agreements before the end of the year in order to avoid application of the bill to those agreements.

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

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