

Another One Bites the Dust - Minnesota Becomes Fourth State to Ban All Future Employment Non-Compete Agreements

The Minnesota Legislature last week agreed to a new law rendering void and unenforceable all future covenants not to compete with an employee or independent contractor, except for agreements entered into in connection with the sale or dissolution of a business. When signed into law by the Minnesota Governor, Minnesota will join California, Oklahoma and North Dakota, as states to outright ban employment related non-compete agreements (“noncompetes”). We’ve previously written about similar efforts underway in other states to do the same.

The Minnesota law contains two limited exceptions for noncompetes: (1) during the sale of a business where the agreement prohibits the seller from carrying on a similar business within a reasonable geographical area for a reasonable period of time, or (2) in anticipation of the dissolution of a business where the dissolving partnership or entity agrees that all or any number of the partners, members, or shareholders will not carry on a similar business in a reasonable geographical area for a reasonable period of time. Also, the law does not invalidate nondisclosure, confidentiality, trade secret, or non-solicitation agreements. The law does, however, also prohibit employers from requiring employees who reside and work in Minnesota to agree, as a condition of employment, to a provision in an agreement that would: (1) require the employee[s] to adjudicate outside of Minnesota a claim arising in Minnesota; or (2) deprive the employee[s] of the substantive protection of Minnesota law with respect to a controversy arising in Minnesota. This is an increasingly common measure of protection of home state residents by legislatures, designed to prevent forum shopping in craftily drafted employment agreements.

Multi-state employers with employees in Minnesota should immediately review their employee agreements and consider other means of protecting their trade secrets, customer relationships, and investments in training. We can help make recommendations for such other means which are appropriate for your business. We can also help answer the questions left open by this new law including, for example, whether otherwise prohibited non-compete agreements become enforceable if they are designed to protect trade secrets and confidential information.

Multi-state employers with employees inside and outside their home location should be aware that there may be several choice of law possibilities which vary widely and can impact the enforceability of otherwise seemingly reasonable non-compete agreements. We are monitoring other efforts to ban employment related non-compete covenants, like the Minnesota legislation, so that our multi-state clients can be aware of changes in state law and plan accordingly. If you have any questions, please feel free to reach out to Thomas A. Muccifori, Chair of Archer’s Trade Secret Protection and Non-Compete Group at tmuccifori@archerlaw.com or 856-354-3056.

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