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Client Advisory

Employers Beware: The Workforce Mobility Act of 2019

The Workforce Mobility Act of 2019 is a federal bi-partisan bill, introduced this month by Democratic Senator Chris Murphy (CT) and Republican Senator Todd Young (IN), which seeks to dramatically curtail the use of non-compete agreements on the federal level because "noncompete agreements are blunt instruments that crudely protect employer interests and place a drag on national productivity," according to the press release accompanying the bill.

The Workforce Mobility Act represents the third federal effort to restrict or ban non-compete agreements in the past eighteen months, and like its predecessors, goes too far and is destined to fail. Specifically, in April 2018, the Senate and the House of Representatives each proposed legislation which, if enacted, would impose a federal ban on the use of employee non-competes. Those two bills went nowhere. Thereafter, in January 2019, Republican Senator Marco Rubio (FL) introduced the "Freedom to Compete Act" which sought to amend the Fair Labor Standards Act of 1938 in order to ban non-compete agreements for most non-exempt workers. That bill was referred to the Senate Committee on Health, Education, Labor and Pensions, but has proceeded no further. All three of these proposed bills are not likely to become law as currently written. They represent a political over-reaction to some of the perceived abuses seen across the country in which employers have sought to implement non-compete agreements against low level workers in the fast food industry, sandwich shops, pizza parlors and the like. Those recent cases have prompted legislatures in many states, most notably Massachusetts, New Jersey, Pennsylvania, New Hampshire, Vermont to each propose legislation in their states which, if enacted, would dramatically curtail the use of non-compete agreements.

The problem is that most of these state legislatures, and now the 116th Congress in its Workplace Mobility Act of 2019, go too far with their proposed legislation. While no one can seriously dispute that an employer has absolutely no legitimate interest in preventing a Jimmy John's sandwich maker, earning $12 per hour, from leaving to join a competitor; the proposed legislation, which follows on the heels of the Obama Administration's "Call to Action" report on non-compete abuses, throws the proverbial "baby out with the bath water" by proposing to invalidate all non-competes. The legislation ignores the important and often vital role that well crafted, narrowly tailored non-competes can play to protect trade secrets in a world where employees are increasingly mobile, remote and less supervised, and where information is more portable. Employers and human resources leaders should continue to protect company secrets through nondisclosure agreements and, in the right circumstance, non-compete agreements. In the meantime, stay tuned for status reports on the Workplace Mobility Act of 2019, which, if enacted, would be a game changer requiring an overhaul by employers and HR professionals of the way they seek to protect company jewels from side-switching employees.

If you have questions about The Workforce Mobility Act, non-compete agreements, or the myriad of legal issues that arise when a valuable employee departs last minute to your most direct competitor under clandestine circumstances, feel free to call Thomas A. Muccifori, chair, at (856) 354-3056 or any member of Archer's Trade Secret Protection and Non-Compete Group in Haddonfield, N.J., at (856) 795-2121, in Princeton, N.J., at (609) 580-3700, in Hackensack, N.J., at (201) 342-6000, in Philadelphia, Pa., at (215) 963-3300, or in Wilmington, Del., at (302) 777-4350.