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Client Advisory

Pennsylvania is Considering Banning All Non-Competes for all Healthcare Practitioners

On March 15, 2023, Pennsylvania State Senators Brooks, Cappelletti and Kane introduced the Healthcare Practitioner Non-Compete Act (Senate Bill No. 521) which, if enacted, would render any healthcare non-compete agreement unenforceable in Pennsylvania, for all healthcare practitioners and groups. But, there is a catch—the Act only applies if the healthcare practitioner is dismissed. There is another catch—the term “dismissed” is not defined in the Act. This could lead to litigation over the issue of whether “dismissed” includes an employee who was fired with cause, without cause, or constructively terminated forcing the employee to leave without being “dismissed.” It remains to be seen whether any of those scenarios would constitute “dismissed” rendering the non-compete agreement unenforceable under the Act.

Why did Pennsylvania feel the need for this proposed legislation? There are a number of stated reasons in SB521:

- Patient access to healthcare in this Commonwealth often depends on geography, transportation and availability of practitioners.
- Most of rural Pennsylvania can be considered healthcare deserts in which patients travel two or three hours for their basic healthcare needs.
- Continuity of care is a fundamental public policy goal in which patients are most adherent to their healthcare goals and build trust with their healthcare practitioners.
- The global Covid-19 pandemic exacerbated an already prominent shortage in healthcare practitioners statewide.
- More healthcare practitioners are specializing their education and residencies to increase their wages with the goal of paying off escalating education loan debt.
- This Commonwealth cannot afford to continue losing healthcare practitioners to surrounding states and must do all that it can to attract and retain them.

The Pennsylvania Healthcare Practitioner Non-Compete Act is the latest proposed state legislation nationwide, joining 64 other bills proposed in 24 other states, together with four bills proposed in Congress. Of course, all of these state and federal legislative bills could be rendered moot if the Federal Trade Commission’s proposed Rule to wipe out all employee non-compete agreements becomes final. That Rule was unveiled on January 5, 2023 and the FTC has extended the public comment period on that Rule from March 20, 2023 to April 19, 2023. As of this afternoon, there are 19,526 public comments submitted in response to the FTC proposed Rule.

We will continue to monitor and report on significant legislative developments in Pennsylvania, and elsewhere. If you have any questions or would like more information in the meantime, please contact Thomas Muccifori, Chair of Archer’s Trade Secret & Noncompete Group, at 856-354-3056 or tmuccifori@archerlaw.com.

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