



The Assault Continues: Recent Developments Would Severely Curtail Employers' Rights To Enforce Non-Compete Agreements

Client Advisories

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Today, a bill in New Jersey that would restrict the enforcement of non-compete agreements took a step closer to passage. Meanwhile, Congressional Democrats introduced a federal bill that would ban non-compete agreements altogether.

On April 26, 2018, six Democratic Representatives introduced H.R. 5631, entitled the "[Workforce Mobility Act of 2018](#)." Three Democratic Senators introduced a companion bill in the Senate. If this bill or a similar bill were enacted into law, it would represent a dramatic restriction in the way that employers are permitted to protect their sensitive proprietary information when employees leave the company.

The proposed bill provides a federal ban on the use of non-compete agreements. This change is drastic. Currently, there is no federal law governing non-compete agreements, which leaves the matter to the states (today, California, Oklahoma, and South Dakota are the only states that have such bans in place). While a number of states, including New Jersey and Pennsylvania, have pending bills dealing with non-compete agreements in varying degrees, the enactment of this federal legislation would render state efforts superfluous.

The bill defines a non-compete agreements as an agreement that prevents the employee from (1) working for a specific employer for a specified period of time; (2) working in a specified geographic area; or (3) working for any other similar employer. The proposed bill would ban all such agreements.

In addition, the proposed bill allows employees to sue in federal court for violations of the bill. Employers found liable would be exposed to actual and punitive damages, as well as attorneys' fees and costs.

Finally, the proposed bill would specifically allow employers to continue to use nondisclosure agreements to protect employers' trade secrets.

The “Workforce Mobility Act of 2018” is the latest step in the two-pronged assault on non-compete agreements that began during the **Obama Administration**. As stated above, New Jersey currently has **pending legislation** that would drastically restrict the use on non-compete agreements. On Thursday, May 10, 2018, the New Jersey Assembly Labor Committee passed the proposed bill by a vote of 6-3. The Chamber of Commerce Southern New Jersey opposes the bill, pointing out that all of New Jersey’s neighbors-New York, Pennsylvania, and Delaware-routinely enforce non-compete agreements and recognize these agreements as a normal business practice.

In addition, Pennsylvania has a bill **current bill pending** that would also severely curtail the use of non-compete agreements in the state.

We will continue to monitor the progress of the proposed bills and provide updates as warranted. In the meantime, if you have questions regarding the proposed federal ban on non-compete agreements, restrictive covenants in general and how they may affect you or your business, or any of the complicated legal issues that arise when a valuable employee departs for a competitor, we are here to assist you. Feel free to call **Thomas A. Muccifori** at 856-354-3065 or tmuccifori@archerlaw.com or any member of Archer’s **Trade Secret Protection 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.

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