



A Change on the Horizon? New Jersey Legislature Advancing Bill to Limit Non-Competes

Client Advisories

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On March 19, 2022, the New Jersey Assembly Labor Committee considered and pushed forward a bill, A3715, which codifies many of New Jersey's existing standards for non-compete agreements, but adds a number of new restrictions both to the viable (and prohibited) terms for non-competes, as well as to the procedures that employers must follow to establish and enforce them. We've previously written about other legislative attempts to regulate the use of non-competes, as seen [here](#). A3715 is the latest such attempt and contains changes, if enacted, employers should know about immediately. The procedural changes, such as a requirement that the employer disclose the terms of the non-compete 30 days before the commencement of employment, are important to the extent that employers will have to be aware of and comply with them if and when A3715 becomes law. Conversely, A3715's restrictions on the terms of non-competes present an immediate concern for employers because A3715 explicitly excludes any non-compete "in effect on or before the date of enactment."

Most notably, A3715 sets forth a number of prohibited terms for non-competes such as:

- Non-competes may not exceed 12 months following the date of termination of employment;
- Non-competes must be limited to the geographic area(s) in which the employee provided services, or had a material presence, during the two years preceding the employee's termination, and cannot prohibit the employee from seeking employment in other states;
- Non-competes are not enforceable against:
 - a student that enters into a short-term employment relationship with an employer while enrolled in an undergraduate or graduate educational institution;
 - an apprentice participating in an appropriately registered apprenticeship program;
 - a seasonal or temporary employee;

- an employee who has been terminated without a determination of misconduct or laid off by action of the employer;
 - an independent contractor;
 - an employee under the age of 18;
 - a low-wage employee; or
 - an employee whose period of service to an employer is less than one year; and
- Employers may not enter into “no-poach agreements,” namely any agreement that restricts or hinders the ability of an employer to contract for the services of a low-wage employee.

In light of these changes, savvy employers should take the opportunity to establish new non-competes or modify existing ones before A3715 takes effect.

To learn more about this legislative proposal or non-compete agreements, please contact **Nicholas Franchetti** at 856-857-2786 or nfranchetti@archerlaw.com, or **Tom Muccifori** at 856-354-3056 or tmuccifori@archerlaw.com.

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Related People



Nicholas T. Franchetti

Associate

✉ nfranchetti@archerlaw.com

☎ 856.857.2786



Thomas A. Muccifori

Partner

✉ tmuccifori@archerlaw.com

☎ 856.354.3056



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