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Déjà Vu All Over Again

Client Advisories

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Now that the major league baseball season is over, and the Houston Astros have won another World Series, with hints of yet another cheating scandal, we are reminded of Yankee legend Yogi Berra's famous observation, "It's *déjà vu* all over again." That Yogi-ism is an apt way to describe the way history repeated itself this year both in major league baseball and the world of non-compete agreements. For example, like the Astros reaching the World Series the last 4 out of 6 years, the New Jersey Legislature has, for the fourth legislative session out of six, introduced multiple bills that seek to fundamentally alter the way in which an employer would be able to protect its legitimate business interests by way of a non-compete agreement. The first such bill introduced this year was Assembly Bill A3715, which we reported on in our May 2022 Advisory. That bill sailed through the NJ Assembly Labor Committee by a 6-3 score in May this year, but legislators have not been able to advance that bill to second base, stranding the bill at first base for the fourth year in a row.

Subsequently, the New Jersey Senate introduced S1410 and recently conducted hearings that produced evenly divided, spirited debate, centered around S1410's "garden leave" provision which, if enacted, will render noncompetes null and void unless employers pay 100% of the former employee's salary and health benefits for the entire time the employee is sitting on the sidelines (ie; in the garden) during the noncompete time period. This controversial, onerous requirement, is the primary reason S1410 has been introduced but hasn't yet made it out of the Senate Labor committee and into the batter's box. In addition to this garden leave provision, S1410 also proposes, among other things, the following game changing provisions:

- No non-compete can exceed one year;
- Exempts low wage employees and non-exempt employees from noncompete agreements;
- Prohibits "no poach" agreements;
- Imposes a 10-day notification requirement to enforce any agreement or it will be rendered null and void;
- ·Prohibits non-compete agreements with independent contractors, seasonal employees, or employees who have been working less than one year or were terminated.

S1410 proposes profound changes for New Jersey employers with these stringent procedural requirements which will greatly increase the costs of enforcing covenants against former employees. While S1410 is the latest legislative attempt to limit the use of non-compete agreements in New Jersey, it is not the only such attempt to curtail the use of these agreements nationwide. This year alone, there have been a total of 67 non-compete bills proposed in 21 different states, together with four different proposed Federal non-compete bills. In addition to New Jersey bills A3715 and S1410, legislatures in 20 other states, including FL, HI, IL, IN, IA, KY, MA, MO, NH, NY, OH, OK, OR, PA, SC, TN, VT, VA, WV, WI and the District of Columbia, are considering or have enacted pending legislation which fundamentally alters the way employers can utilize restrictive covenants. If you do business in these states, or have employees working remotely in states other than New Jersey, please see our recent "heads-up" which appeared in *Law 360*.

Archer's Trade Secret & Non-Compete Group is tracking all of these nationwide developments since we subscribe to another Yogi-ism -"You can observe a lot by watching." In so doing, we will make sense of the many different and confusing developments out there and keep you posted with relevant updates here in New Jersey and elsewhere. To learn more about any of these legislative proposals, or preemptive measures you can take now before any of these any legislative proposals take effect, please contact Tom Muccifori, Chair of Archer's Trade Secret Protection & Non-Compete Group at 856-354-3056 or tmuccifori@archerlaw.com.

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Related People

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Attachments

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