Minnesota's Comprehensive Non-Compete Reform: Guidance for Employers

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Minnesota is the latest state to implement significant changes to its non-compete laws. Newly enacted legislation has created a near-ban on this type of restrictive covenant. In this article, w will explore the key provisions of the new law and provide guidance for employers on how to comply with the new law.

Non-Compete Agreements 101

Non-compete agreements are a type of restrictive covenant used in an employment setting. Generally, these agreements prevent an employee from working for a competitor of their employer for a certain length time after the employment relationship ends. Employers might use this type of agreement to protect company information or prevent worker turnover. However, many believe these agreements give employers unfair power over their employees. This has prompted a number of states to significantly limit the application of these agreements. Minnesota is the latest state to institute a near-ban on non-compete agreements.

Minnesota's Prohibition of Non-Compete Agreements

Under the new Minnesota law, nearly all non-compete agreements entered into on or after July 1, 2023 will be void and unenforceable. Employers will no longer be able to enter into these agreements with their employees, regardless of whethe the employee is a low-wage worker or a C-Suite executive. Notably, the Minnesota law also prohibits an employer from entering into a non-compete agreement with an independent contractor.

Scope of Non-Compete Exclusions

There are, however, a few minor exceptions to this rule. Partners, members, or shareholders that are selling or dissolving a business can enter into non-compete agreements, so long as the non-compete agreement is entered into freely and restric the individuals from engaging in a similar business within a reasonable geographic area and for a reasonable duration of time.

Categories

It is important to note that the legislation does not ban all restrictive covenants in an employment setting, merely non-compete agreements. The new law explicitly excludes non-disclosure agreements, agreements protecting trade secrets or confidential information, agreements restricting the use of client or contact lists, and non-solicitation agreements from the definition of prohibited non-compete covenants. Employers can continue to enforce these separate provisions to safeguard their proprietary interests.

Venue, Choice-of-Law, and Remedies

The legislation also prohibits Minnesota employers from circumventing these requirements by electing to have their employment agreements governed by the law of a jurisdiction that permits non-compete agreements. Employers must ensure that claims or controversies arising in Minnesota are adjudicated within the state and in accordance with Minnesota law.

If an employee takes legal action to enforce their rights under this legislation, the law allows for an award of "reasonable attorneys' fees" in connection with the dispute.

Impact on Existing Agreements

The Minnesota non-compete reform is not retroactive, meaning agreements entered into before July 1, 2023 remain potentially enforceable. However, judges handling cases involving non-compete agreements entered into before the effective date must consider the provisions of the new law when making their decisions.

While Minnesota non-compete agreements prior to July 1, 2023 remain enforceable for the time being, that may not alway be the case. The Federal Trade Commission (FTC) has proposed a ban on non-compete agreements that would be retroactive. The FTC will vote on the issue in 2024 and if passed, Minnesota non-compete agreements prior to July 1, 2023 would also be unenforceable.

Preparing for the Change

Employers should take proactive steps to comply with the new Minnesota law and mitigate any risk of legal challenges. Immediate review of all employment contracts is recommended. This review should involve removing impermissible non-compete agreements, revisiting non-solicitation and non-disclosure provisions to avoid potential non-compete implications and developing a strategy for multi-state covenants that balances enforceability and administrative burden.

Employers in Minnesota must stay informed and ensure their employment agreements align with the new legislation. Seeking legal guidance and conducting regular reviews of contract forms will help navigate the changing landscape while protecting both the interests of the business and the rights of employees.

ETHICS: Attorney Non-Compete Restrictions in Minnesota

As the new legislation brings attention to non-compete agreements for employees and independent contractors, it is important to remember that attorneys in Minnesota are also subject to specific restrictions regarding non-compete agreements. Under Rule 5.6 of the Minnesota Rules of Professional Conduct, lawyers are prohibited from participating in agreements that restrict their right to practice after the termination of a professional relationship, with limited exceptions.

Rule 5.6(a) explicitly states that lawyers cannot enter into agreements such as partnership, shareholder, operating, employment, or similar agreements that impose restrictions on their ability to practice law after leaving the professional relationship, except in cases involving retirement benefits. This rule recognizes the importance of professional autonomy fo lawyers and the freedom of clients to choose legal representation.

Additionally, Rule 5.6(b) prohibits lawyers from entering into agreements that include restrictions on their right to practice law as part of the settlement of a client controversy. This provision ensures that lawyers are not constrained in their ability t represent other individuals in connection with settling a client's claim.

It is crucial to note that Rule 5.6 does not apply to restrictions that may be included in the terms of selling a law practice, as outlined in Rule 1.17. This exception allows for reasonable restrictions on the practice of law as part of the sale of a law practice, facilitating the transition of clients and maintaining the integrity of the profession.

While the focus of the recent legislative changes in Minnesota pertains to non-compete agreements for employees and independent contractors, attorneys must also adhere to the specific provisions outlined in Rule 5.6 of the Minnesota Rules Professional Conduct. Understanding and complying with these rules ensures that attorneys can exercise their professional autonomy and uphold the best interests of their clients.

Regardless of whether you are an employee, an independent contractor, or an attorney, it is important to remain vigilant about the restrictive covenants you can and cannot be held to. Individuals in Minnesota should consult with an attorney – c in the case of an attorney, consult with a professional ethics advisor – to ensure any applicable employment agreement complies with the relevant laws.

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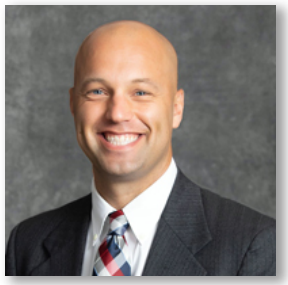

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