CLIENT ALERTS & INSIGHTS

Ohio Senate Bill Seeks To Ban Non-Competes

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A new bipartisan bill has been introduced in the Ohio Senate that would ban employers from entering into non-competes with Ohio workers, a dramatic change in tone from the state's current stance on non-compete agreements.

While a majority of states across the nation have either banned or placed some limitations on the use of non-competes in the employment context, Ohio is in the minority with no statutory restrictions on non-competes. Senate Bill 11 seeks to change that. The bill proposes that employers would be prohibited from entering into, attempting to enter into, presenting, or attempting to enforce any agreement that would prohibit an Ohio worker from seeking or accepting work with a person, or operating a business, after the termination of the working relationship between the parties. Notably, non-competes would be prohibited in agreements with any individual who provides services for an employer, which includes employees, independent contractors, externs, interns, volunteers, apprentices, and sole proprietors.

The types of agreements banned would include those that (1) prohibit a worker from working for another employer for a specified period of time; (2) contain restrictions on working in a specified geographical area; or (3) prevent workers from working for another entity that provides similar services.

Employers would also be prohibited from penalizing workers who terminate the working relationship between the parties. For example, employers may not require workers to pay any fees related to lost profits, lost goodwill, replacement hiring fees, or retraining fees. Employers also cannot seek reimbursement for the employer's expenses related to training or immigration and visa-related costs previously covered by the employer.

Beyond outlining the types of agreements prohibited, the bill also addresses governing law and forum selection with respect to *any agreement* between an employer and worker entered into, modified, or extended on or after the effective date of the bill. When a worker primarily resides and does business in Ohio, employers cannot require the worker to adjudicate a claim arising in Ohio in a venue or forum outside of the state. Additionally, the agreement cannot seek to enforce any choice of law provision that circumvents the protections provided to employees under Ohio law. However, when a worker is individually represented by independent legal counsel in negotiating the terms of the agreement and the worker chooses a venue, forum, or choice of law outside of Ohio, that choice will be honored.

As for damages, if a worker or prospective worker brings a civil action against an employer for a violation of these restrictions and the worker prevails, the worker shall be awarded attorney's fees, and may be awarded actual damages, punitive damages, or injunctive relief.

If successful, this bill would add Ohio to the growing list of states that fully outlaw non-compete agreements in the employment context, including California, North Dakota, Oklahoma, and Minnesota, and the 33 states (plus Washington D.C.) that currently restrict the use of non-competes in some capacity. However, for now, employers in Ohio can continue to enter into and enforce non-competes with their employees.

We will continue to provide updates on the status of this bill.

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