CLIENT ALERTS & INSIGHTS

Restrictive Covenant Update – Illinois moves forward while District of Columbia slows down

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Authors: J. Scott Humphrey, Margo Wolf O'Donnell, Charles B. Leuin, Jordan J. Call

Benesch previously informed its clients about the significant changes made to Illinois restrictive covenants law by the Illinois legislature in the waning moments of its most recent legislative session. These changes include, among other things, creating a statute that a) establishes compensation thresholds for the enforcement of non-competition and non-solicitation agreements and b) requires employers to i) provide the employee with "adequate consideration" in exchange for agreeing to the restrictive covenant(s), ii) advise the potential hire, in writing, to consult with an attorney before signing a restrictive covenant agreement, and iii) allow the new employee 14 days to consider signing the restrictive covenant agreement. (Please click here for our complete analysis of the new Illinois restrictive covenant statute and steps your company can take to ensure compliance with the statute). Not surprisingly, Illinois Governor J.B. Pritzker signed the restrictive covenant statute into law on August 13th and we now know that the statute will go into effect on January 1, 2022.

Whereas Illinois is moving forward with its restrictive covenant statute, the District of Columbia, on the other hand, has apparently pushed back/delayed the enforcement of the non-compete statute Mayor Muriel Bowser signed on January 11, 2021. The District's non-compete statute, which was initially expected to become law this fall, essentially forbids an employer from requiring or requesting that an employee who works in the District, or a prospective employee whom the employer reasonably expects will work in the District, sign any agreement with a non-compete provision. In order to make sure that employers are informing their employees about the unenforceability of non-competes in the District, the statute requires the employer to provide the following notice to its District employees or those who will likely perform services in the District:

> "No employer operating in the District of Columbia may request or require any employee working in the District of Columbia to agree to a non-compete policy or agreement, in accordance with the ban on Non-Compete Agreements Amendment Act of 2020"

Notably, the District statute does not apply to non-solicitation agreements/provisions and exempts charitable, religious, and non-profit workers, doctors making over $250,000 a year and (interestingly) casual babysitters. The statute also prohibits employers from banning employees from engaging in competitive activities during their employment. In other words, the District statute allows an employee to work for a competitor, or start and operate a competing business, while also working for the employer. Apparently, some District council members have now taken a closer look at the statute and are raising questions about it. Some council members have also suggested revisions. Among the most significant suggestions/potential revisions is striking the language that allows employees to engage in activities competitive with her/his employer while employed. Another proposed amendment/revision would further clarify that the statute does not apply to

non-solicitation agreements or confidentiality agreements that protect trade secret information. As a result of the questions now being raised by several council members, the implementation of the statute is now deferred until at least April 1, 2022. We will continue to monitor all proposed changes to the statute as well as when the statute will take effect.

For more information, please contact:

Scott Humphrey at 312.624.6420 or shumphrey@beneschlaw.com.

Margo Wolf O'Donnell at 312.212.4982 or modonnell@beneschlaw.com.

Charles B. Leuin at 312.212.6344 or cleuin@beneschlaw.com.

Jordan J. Call at 216.363.6169 or jcall@beneschlaw.com.