

June 3, 2019 Publication

Topics

Employment

Related People

Paul M. Ostroff
ostroffp@lanepowell.com

Related Practices & Industries

Business
Labor, Employment & Benefits
Litigation

Oregon Employers Face Another Hurdle as Legislature Amends Non-Compete Law (Once Again)

Labor, Employment & Benefits Legal Update

On May 13, the Oregon Legislature enacted [HB 2992](#), which amends the state's non-compete law. Under the amendment, an employer may not enforce a non-compete agreement unless it first provides the employee with a signed, written copy of the agreement within 30 days after the employee's termination of employment. This amendment applies to all agreements entered into after January 1, 2020. Moving forward, employers should deliver a letter to every departing employee who is subject to a non-compete reminding them of their obligations and enclosing the signed agreement.

Other than this new procedural requirement, the remainder of Oregon's non-compete law (ORS 653.295) remains intact. To summarize, Oregon employers may only enforce non-compete agreements against white collar exempt employees who 1) earn more than the median income of an urban family of four, and 2) have access to trade secrets or competitively sensitive confidential information. Also, employers must notify the prospective employee in a written offer of employment that a non-compete agreement is required at least two weeks prior to the first day of employment, or enter into the agreement upon a bona fide promotion. Non-compete agreements may not exceed 18 months from the date of termination.

Oregon's non-compete law applies only to agreements made in the context of an employment relationship and not otherwise, such as in the sale of a business. The law also does not apply to bonus restriction or agreements prohibiting the solicitation or transaction of business with customers, or solicitation of employees.

States have recently passed similar restrictions on non-compete agreements, including Washington, which enacted a stiff law in May. Like Oregon, Washington law will require early disclosure to new employees, limit duration to 18 months post-employment, and exclude non-solicit agreements, confidentiality agreements, and inventions and trade secrets covenants.

What Should Businesses Do Now?

- Review non-compete agreements to ensure they comply with current law.
- Identify which positions are properly subject to non-competes, and then ensure that the agreement is shared prior to employment, and upon the employee's departure.
- Review employee exit procedures and documentation (e.g., exit interviews, checklists, acknowledgements signed by departing employee) to document delivery of the signed copy of the non-compete agreement to the departing employee.
- Consult with counsel before attempting to enforce any agreement containing a non-compete covenant.

If you have questions about non-competes or other employment agreements, Lane Powell's Lawyers for Employers™ are available to help.