

Minnesota Bars Non-Competes with Employees and Independent Contractors

June 08, 2023

Beginning July 1, 2023, a new Minnesota statute will prohibit non-compete agreements with employees and independent contractors in the state. This is part of a recent trend to limit or ban non-competes at the state or federal level. The Minnesota statute eschews the compensation thresholds and other limits that other states that have enacted non-compete statutes have used and is more similar to the FTC's recent proposed rule barring non-competes altogether. [Read our article from January of '23 on the FTC's proposed rule on banning non-competes.](#)

The Minnesota statute provides that any covenant not to compete "is void and unenforceable." It defines a covenant not to compete as any agreement between an employer and an employee that restricts the employee (after termination of employment) from (1) working for another employer for a period of time, (2) working in a specified geographic area, or (3) working for another person or entity in a capacity similar to the employee's work for the prior employer. The statute defines "employee" to include independent contractors, so it will bar non-competes with independent contractors as well as with traditional employees.

Although the statute is broad, there are limited exceptions. A non-compete that it is agreed upon during the sale or dissolution of a business remains enforceable if it prohibits an owner of the business from conducting a similar business in a reasonable geographic area for a reasonable period of time. In addition, nondisclosure agreements, agreements to protect trade secrets or confidential information, non-solicitation agreements, agreements restricting the ability to use client or contact lists, and agreements not to solicit customers of the employer are all carved out of the definition of covenants not to compete. Reasonable confidentiality and non-solicitation agreements should therefore continue to be enforceable to the same extent as they are under current Minnesota law.

The statute prohibits choice of law and forum provisions that would apply the law of another state to an employee who "primarily resides and works in Minnesota." Employers may not require employees who primarily reside and work in Minnesota to agree to (1) litigate or arbitrate outside of Minnesota a claim arising in Minnesota, or (2) deprive the employee of the substantive protections of Minnesota law with respect to controversies arising in Minnesota. Any contract that violates this provision is voidable at any time by the employee, and Minnesota law shall then govern the dispute.

The statute empowers courts to award reasonable attorneys' fees — as well as injunctive relief and other available remedies — to employees who bring actions to enforce their rights under the statute.

The statute will apply to all agreements entered into on or after July 1, 2023, and does not apply retroactively to existing agreements. Employers who have employees or independent contractors who primarily reside and work in Minnesota should take steps to comply with the new law, including by removing non-compete agreements from new contracts with employees or independent contractors in Minnesota and exploring increased use of confidentiality or non-solicitation agreements.

* * *

Carter Ledyard & Milburn LLP uses Client Advisories to inform clients and other interested parties of noteworthy issues, decisions and legislation which may affect them or their businesses. A Client Advisory does not constitute legal advice or an opinion. This document was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. © 2023 Carter Ledyard & Milburn LLP.

related professionals

Jeffrey S. Boxer / Partner

D 212-238-8626

boxer@clm.com