

New York City Considers Non-Compete Bans and Limits

April 01, 2024

In the wake of New York Governor Kathy Hochul's [veto of state legislation](#) that would have banned virtually all non-compete agreements in New York State, the New York City Council is considering three separate bills that would ban or limit non-competes in New York City.

The first [bill](#) being considered by the City Council is a complete ban on all non-competes with all "workers" in New York City. "Workers" is defined to include both employees and independent contractors. The bill provides that any agreement that "prevents, or effectively prevents," a worker from working for a different employer or from operating their own business is unenforceable. The bill would not only prevent employers from entering into new non-competes with any worker, but it also would invalidate all existing non-competes with workers in New York City. The bill specifically provides that all existing non-compete agreements must be "rescinded by the employer" before the date on which the proposed law becomes effective. The proposed legislation imposes a \$500 per violation civil penalty on any employer that violates the statute.

The second [bill](#) being considered by the City Council imposes minimum compensation thresholds and notice requirements for new non-compete agreements. First, the bill precludes employers from entering into new non-compete agreements with "low-wage employees" after the effective date of the legislation. The bill defines a "low-wage employee" as any employee except those employed in a bona fide executive, administrative or professional capacity who earn at least \$1,300 per week (there are a few other narrow exceptions). The bill does not on its face apply to independent contractors. The bill does not invalidate pre-existing non-competes with low-wage employees. Second, if an employer wishes to enter into a non-compete with an individual who is not a low-wage employee, then the bill requires the employer to disclose to the employee "at the beginning of the process for hiring" the employee that they may be subject to a non-compete. This proposed legislation is similar to statutes adopted in a number of states over the past few years that limit non-competes to highly compensated employees who are given adequate and timely notice of the non-compete.

The third [bill](#) before the City Council only applies to freelance workers, not employees. The bill defines freelance workers to include most independent contractors except for some sales representatives, lawyers, licensed medical professionals, and FINRA members. The bill does not bar non-competes with freelancers, but it requires the hiring party to pay the freelancer a "reasonable and mutually agreed upon sum" at least monthly for the duration of the non-compete. Pre-existing non-competes with freelancers would not be subject to the new legislation. The bill gives freelance workers the right to sue and to receive statutory damages of \$1,000 and reasonable attorneys' fees for a violation of the statute. New York City also may seek penalties of \$500 per violation or up to \$25,000 for a pattern or practice of violations.

It is impossible to determine at this point whether the City Council will pass any of these bills or, if so, whether the mayor will sign them. We will continue to monitor the status of these bills.

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. © 2024 Carter Ledyard & Milburn LLP.

related professionals

Jeffrey S. Boxer / Partner

D 212-238-8626

boxer@clm.com

Jonathan Trafimow / Partner

D 212-238-8651

trafimow@clm.com