

## Alerts

### 4 **Noncompete Agreements Banned in Minnesota: Action Items for Employers**

Minnesota legislators made sweeping changes to Minnesota law regarding the enforceability of employee covenants not to compete with the passage of Minnesota Session Laws 2023 – Chapter 53 that Governor Walz signed into law on May 24, 2023. An employee covenant not to compete is broadly defined to include any agreement that restricts a Minnesota employee from working in a specified geographic area or for a similar employer after termination of employment.

#### **This new law will make the following three major changes to Minnesota law that impact employers:**

1. The law will prohibit post-employment employee covenants not to compete in any agreement entered into on or after July 1, 2023, other than in connection with the sale or shut-down of a business. This represents a major shift in Minnesota public policy, which had previously permitted the enforcement of an employee noncompete agreement provided the agreement reasonably protected a legitimate interest of the employer. Consistent with existing Minnesota law, the new law clarifies that employers are not prohibited from entering into agreements with employees that include provisions that prohibit the employee from soliciting the employer's customers or employees.
2. The prohibition against covenants not to compete also extends to non-employee independent contractors. Employers who have employees or independent contractors who live or work in Minnesota should update both their employment agreement and independent contractor forms for use on and after July 1, 2023. The new law indicates that other language in such an agreement that is not inconsistent with the new law may still be enforced.
3. Employers can no longer require Minnesota employees to litigate outside of Minnesota or apply the law of another state. Previously, "choice-of-law" and "choice-of-forum" provisions could have forced an employee to litigate in another state using the laws of another state. Any such contract provision put in place on or after July 1, 2023, is unenforceable against employees who primarily reside and work in Minnesota.

**July 1, 2023, is the effective date of the new law** that will apply to "agreements entered into on or after that date." An open question for the future may be how willing Minnesota courts will be to enforce pre-July 1, 2023, employee noncompete provisions after that date.

#### **Action Items for Minnesota Employers:**

Minnesota employers may want to consider the following action items to prepare for the new law:

1. Remove post-employment noncompetition provisions from new employment agreements and new independent contractor agreements. Update non-solicitation, confidentiality, and non-interference clauses to limit any gaps that may be left by the removal of the post-employment noncompetition provisions.
2. Reevaluate deferred compensation programs, including changes to language that may be required to programs and forms.
3. Revise forum selection clauses and "choice of law clauses" in contracts with employees that are inconsistent with the new law. Note that the drafting may require savings clause language because of multi-state conflicts of laws.
4. Confirm with employment managers that the employer intends to continue to enforce post-employment noncompetition agreements entered into prior to July 1, 2023. It could be important that managers avoid inadvertent waiver.

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**If you would like assistance assuring best practices in these areas, please contact your attorney at Moss & Barnett.**