



Webinar 7 - April 10, 2024

Legal Trends and Updates on Restrictive Covenants

WEBINAR OUTLINE

Legal Trends

- Congress Takes Aim at Non-Competition Agreements
- NLRB
- States Continue to Target Restrictive Covenants

Pertinent Updates Relating to Restrictive Covenants in the Workplace

- Legislation
- 2024 Minimum Compensation Threshold Updates
- Recent Caselaw
- Key Tips for Drafting Restrictive Covenants

HRtelligence TIPS

Legal Trends

Restrictive covenants have been the subject of much discussion and scrutiny across the country.

Congress Takes Aim at Non-Competition Agreements

NLRB

States Continue to Target Restrictive Covenants

- California Strengthens its Aggressive Policies Against Non-Competes
- Minnesota Bans Non-Competes
- Connecticut
- Indiana

Pertinent Updates Relating to Restrictive Covenants in the Workplace

Legislation

- New York Governor Hochul Vetoes Bill That Would Ban Non-Compete Agreements
- New York City to Consider Its Own Ban on Employer Noncompete Agreements Following Governor's Veto
- New Legislation Extends California Noncompete Ban to Agreements Signed Outside the Golden State and May Impose Notice Obligations that Apply Retroactively

2024 Minimum Compensation Threshold Updates

Several jurisdictions will be increasing their minimum compensation floor for certain types of restrictive covenant agreements in 2024:

Recent Caselaw

- Legitimate Interests
- Undue Hardship and Burden
- Public Policy

Key Tips for Drafting Restrictive Covenants

- Legitimate Business Interests
- Narrow Tailoring
- Geographic and Temporal Limits
- Consideration and Fairness
- Review and Revision
- Legal Consultation



Here are some key takeaways for employers:

- All or some combination of post-employment RCAs (nondisclosure, non-compete, non-solicit of employees and customers) can be an effective tools in protecting an employer’s legitimate business interests: confidential information, trade secrets, and customer goodwill.
- Enforcement of these provisions are typically driven by state laws, and in the non-compete context are constantly changing and employers need to stay up to date on these changes. Federal law may some day impact non-competes as well.
- To maximize enforcement of these provisions, be sure to tailor them narrowly so that they are aimed at protecting legitimate business and are not over broad.
- Employers should be sure to supplement these tools with training of workforce on importance of protecting confidential information and trade secrets, and make sure your own house is in order with secure systems, password protected access to confidential information and trade secrets, and strict onboarding and off boarding of employees around these issues.
- When reviewing your current RCA for enforceability and/or whether your company may need to update it, focus on applicable State(s) law and whether your RCA satisfies the basic limitation requirements of (a) consideration, (b) time, (c) scope of activity, and (d) geography.
- In determining the reasonableness of your current RCA, ensure the restrictions are reasonable and narrowly tailored as it relates to the employee’s position (higher versus lower-level employee) and the type of business (local hair salon versus multinational business).

- When considering drafting and implementing new restrictive covenants, assess location(s) of workforce and assets that need protection by virtue of restrictive covenants to determine what state laws apply that will affect enforceability. While there is no “one size fits all” approach, agreements can be drafted and implemented in such a way to address multi-jurisdictional corporate interests.
- Remember that many state laws surrounding restrictive covenants require some sort of consideration that goes beyond continued employment, as well as the requirement of sufficient notice and/or attorney consultation by the employee signing the agreement, so make sure you have considered the time and the money that will be needed for the rollout of restrictive covenants to balance the need to protect company assets while adhering to state statutory and common laws.