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Washington State Imposes Further Restrictions on the Use of Noncompetition Agreements

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On June 6, 2024, new amendments to Washington State's noncompetition statute (RCW 49.62) will go into effect, which place further limitations on the use of noncompetition agreements in Washington. [Substitute Senate Bill 5935](#) introduces several modifications to RCW 49.62 that Washington employers (and employers with Washington employees) should be aware of:

- **Broader definition of "noncompetition covenant."** The statute will now include "an agreement that directly or indirectly prohibits the acceptance or transaction of business with a customer" in the definition of "noncompetition covenant."
- **Narrower "sales of business" exception.** The amendments clarify that a noncompetition covenant entered into in the "sale of business" context is excluded from the statute "only if the person signing the covenant purchases, sells, acquires, or disposes of an interest representing one percent or more of the business."
- **Narrower "nonsolicitation" definition.** While nonsolicitation covenants continue to be excluded from the definition of "noncompetition covenant," the new amendments clarify that a nonsolicitation covenant must only cover "current" customers of the employer, not past customers.
- **Increased specificity concerning notice.** The statute will now require an employer to disclose the terms of a noncompetition covenant no later than the time of the "initial oral or written acceptance of the offer of employment."
- **Eliminated choice of law loophole.** Employers cannot contract around Washington law—any provision in a noncompetition covenant signed by a Washington-based employee or contractor that "allows or requires the application of choice of law principles or the substantive law of any jurisdiction other than Washington state" is void.
- **Expanded private right of action.** Any person aggrieved by a noncompetition covenant (not just the employee who signed the covenant) may now bring a cause of action under the statute. Presumably, this is meant to cover new or prospective employers.
- **Expanded retroactive application.** Washington employers still are not required to formally rescind noncompetition covenants entered into prior to January 1, 2020, that run afoul of the statute if they do not enforce them, but they must now also be careful not to "explicitly leverage" them.

What Employers Should Do Now

Employers have a little over two months to adapt their practices to the new amendments. Washington employers or companies utilizing restrictive covenants for Washington-based employees or contractors should consider taking the following steps to prepare:

- *Review and update template restrictive covenant agreements.* Employers should review their template restrictive covenant agreements for Washington-based employees and contractors to ensure they comply with the new amendments. Employers should be careful not to restrict their review to agreements or clauses labeled as “noncompetition,” because “nonsolicitation” agreements or clauses may also need to be modified based on these changes.
- *Review existing restrictive covenant agreements.* Washington employers should assess whether any previously-signed restrictive covenant agreements run afoul of the new amendments and seek legal counsel on how best to proceed given the retroactive application of the statute.
- *Review notification protocols.* Given the clarification that notice of the noncompetition covenant must be provided no later than the time of oral or written acceptance of a job offer, employers should take steps to ensure that notification is provided at the time the job offer is extended and document such notice.
- *Consider formally rescinding noncompliant agreements.* Given the ambiguity of the phrase “explicitly leverage,” employers may want to consider formally rescinding noncompliant agreements entered into prior to January 1, 2020.

If you have any questions about restrictive covenants in Washington, please feel free to contact the attorneys listed below:

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