



CLIENT ALERT

Navigating Compensation Governance in Uncertain Times

Minnesota Bans Non-Compete Agreements

Following a growing trend, Minnesota has recently enacted legislation that bans non-competition agreements, with New York poised to follow.

Background

Effective July 1, 2023, Minnesota became the fourth state (along with California, Oklahoma and North Dakota) to ban non-competes. New York is poised to implement a similar ban. Other states, such as Colorado, Illinois, Oregon and Nevada, have recently passed laws that impose partial restrictions on non-competition agreements.

Often found in employment contracts and severance agreements, a non-competes agreement or provision prohibits an employee from competing against their former employer following a termination of employment. Typically, the employee promises not to work for a competitor for a specific period of time and within a particular geographic area.

Historically, non-competes agreements have generally been enforced by courts if reasonably tailored to protect legitimate business interests. But, in recent years, there has been a rise in federal and state activity that disfavors or entirely bans agreements. The Federal Trade Commission (FTC) has claimed that non-competes unduly limit worker mobility (particularly for lower-level employees) and suppress wages.

The Minnesota and New York legislation follow federal efforts targeting non-competes agreements, including a proposed rule from the FTC that would ban non-competes agreements, and a memo from the National Labor Relations Board's (NLRB) General Counsel, in which NLRB asserts that certain non-competes provisions in employment agreements violate the National Labor Relations Act. While the General Counsel's memo is not binding law, it does provide an outline of theories that could be used by the NLRB to prosecute alleged offenses.

Minnesota Law Broadly Bans Non-Competition Agreements, But is Not Retroactive

Minnesota's law prohibits employers from entering into non-competition agreements with employees (including executive officers) and independent contractors on or after July 1, 2023, with limited exceptions for agreements relating to the dissolution or sale of a business. Non-competition agreements that existed prior to July 1, 2023 would remain enforceable under Minnesota law.

Importantly, the Minnesota law does **not** ban other types of restrictive covenants commonly included in executive employment agreements and severance arrangements such as non-solicitation of clients and employees, non-disclosure of confidential information and non-disparagement.

The New York bill, which is awaiting review by the Governor Kathy Hochul, would become effective on the 30th day after it becomes law, likewise would broadly ban non-competes in future agreements. However, whether Governor Hochul signs the bill in its current form is uncertain at this time.

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The **Client Alert** is prepared by Meridian Compensation Partners' Governance and Regulatory Team led by Donald Kalfen and Ron Rosenthal. Questions regarding this Client Alert or executive compensation technical issues may be directed to Donald Kalfen at 847-235-3605 or dkalfen@meridiancp.com or Ron Rosenthal at 847-235-3621 or rosenthal@meridiancp.com.

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