

New Illinois Law Significantly Restricts Legality of Non-Compete and Non-Solicitation Agreements

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On May 31, 2021 the Illinois General Assembly passed a groundbreaking bill significantly limiting the use of non-compete and non-solicitation agreements by Illinois employers, to go into effect January 1, 2022. Subject to certain exceptions, the new law applies to all private Illinois employers with Illinois employees.

The law provides that covenants-not-to-compete for employees with actual or expected earnings of less than \$75,000 per year are invalid and illegal. The law contains stepped up thresholds of \$80,000 effective January 1, 2027; \$85,000 effective January 1, 2032; and \$90,000 effective January 1, 2037. Additionally, covenants-not-to-solicit for employees with actual or expected earnings of less than \$45,000 per year are invalid and illegal. The law contains stepped up thresholds of \$47,000 effective January 1, 2027; \$50,000 effective January 1, 2032; \$52,000 effective January 1, 2037.

The law still protects confidential information of the employer subject to non-disclosure agreements, and employers remain able to require and enforce agreements containing: restrictions on disclosure of confidential information, trade secrets or inventions; invention assignment agreements; as well as restrictive covenants, including non-compete and non-solicit, entered into in connection with the sale of a business

Employers negotiating contracts prior to the end of the year need to bear in mind that agreements entered into after January 1, 2022, are void unless the employer (1) advises the employee in writing to consult with an attorney prior to entry into the agreement; and (2) provides the employee with a copy of the agreement a minimum of 14 calendar days prior to commencement of employment or gives the employee at least 14 calendar days to review the agreement. Employees can sign agreements within the 14-day window.

The law also has particular provisions addressing COVID-19 issues. The new law prohibits employers from enforcing otherwise valid non-compete or non-solicitation agreements against employees laid off or terminated due to business circumstances or governmental orders related to pandemic or similar circumstances. An employer can enforce non-compete agreements under this provision provided it pays the effected employee their base compensation, less any compensation earned by the employee through subsequent employment during the restricted period.

Of particular interest to union employees covered by the Illinois Public Labor Relations Act or the Illinois Educational Labor Relations Act, the law makes void and illegal any attempted use of non-compete agreements with such employees.

Further, non-compete agreements with individuals employed in the construction industry (excepting construction employees primarily performing management, engineering or architectural, design or sales functions for the employer, or who are either shareholders, partners, or owners of the employer) are also void and illegal under the statute.

Illinois is not the first state to pass such a statute; the new law is part of a continuing trend among states which have limited non-compete agreements. With a growing trend of states implementing or amending new non-compete laws, employers should continue to monitor new laws relative to their current agreements as well as agreements they plan to have in the future.

If you have any questions pertaining to the implication of the new statute to your Illinois employment relationships, please contact a member of Sandberg Phoenix's Labor and Employment Team.