

HR CLINIC

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The Status of Workplace Non-Competes

Non-competition agreements have always been a popular topic fielded by the HRWS Consulting Teams. Companies remain interested in keeping former employees from using existing relationships to compete against them down the road.

In many cases, these client discussions revolve around best practices, legislative regulations and case law. Currently, there are a number of related initiatives gaining momentum, many of which are positioned to affect the hiring process in the foreseeable future.

Enter the States

Seven states (Maine, Maryland, New Hampshire, Oregon, Utah, Washington and Rhode Island) have now enacted legislation limiting an organization's ability to have employees enter into a non-compete agreement/contract. Much of the new legislation is focused upon low-salaried employees, non-exempt workers and students. In some cases, it includes all employees who are not senior executives.

What Does Congress Say?

In October, Senators Chris Murphy (D-CT) and Todd Young (R-IN) introduced the bipartisan Workplace Mobility Act. The goal of the legislation, per Senator Young's October 17, 2019 press release, "is to limit the use of non-compete agreements that negatively impact American workers."

If Enacted, the Workforce Mobility Act Will:

(Bill Excerpt)

- Narrow the use of non-compete agreements to include only necessary instances of dissolution of a partnership or the sale of a business.
- Place the enforcement responsibility on the Federal Trade Commission and the Department of Labor (DOL), as well as a private, right-of-action.
- Require employers to make their employees aware of the limitation on non-competes, as studies have found that non-competes are often used even when they are illegal or unenforceable. The DOL would also be given the authority to make the public aware of the limitation.
- Require the Federal Trade Commission and the DOL to submit a report to Congress on any enforcement actions taken.

On November 14, 2019 the U.S. Senate Committee on Small Business & Entrepreneurship conducted a hearing to review proposed non-compete bills, including the Workforce Mobility Act.

Moving Forward

The next chapter for non-competes remains undefined as Congress and additional states continue to contemplate legislative proposals. Hiring processes may change as companies consider the potential impact an employee could have, should they depart.

HRWS provides Legislative Updates in the myHRWS Portal designed to keep our brokers and their clients up to date on regulatory changes. If you have any questions, please contact your dedicated HRWS Advisory Team at 866-691-7757 or support@hrworkplaceservices.com.

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