

Governor Hochul Vetoes Ban on Noncompetition Agreements for New York Employees

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The long-awaited death of noncompetes in New York is—forgive the pun—dead in the water, at least for now. On December 22, 2023, Governor Hochul vetoed pending legislation that would have effectively banned noncompetition agreements and certain other restrictive covenants for all New York employees. As we previously [reported](#), the bill was always an overreach: the pending legislation would have banned noncompetition agreements regardless of compensation, job requirements, level within a company, or access to confidential information.

The Governor’s veto strongly indicates that legitimate concerns about the protection of confidential information and customer relationships will prevent New York from “killing” all noncompetition agreements. However, the veto does not resolve the issue conclusively, and New York’s legislature will be tempted to try again. Employers should continue to monitor any new New York legislation aiming to limit the use of noncompetition agreements, particularly in light of the Governor’s statements in her veto memo and the scrutiny of these agreements on a federal level.

Key Takeaways from the Veto Memo

Governor Hochul wrote, “I have long supported limits on non-compete agreements for middle-class and low-wage workers, protecting them from unfair practices that would limit their ability to earn a living.” She further expressed that she had hoped to find a balance between protecting low-wage workers and “allowing New York’s businesses to retain highly compensated talent.” Going forward, she is “open to future legislation that achieves the right balance.”

As we previously wrote, this balance was always one that the legislature—and, for that matter, federal agencies like the [Federal Trade Commission](#) and the [National Labor Relations Board](#)—was always going to have to strike. Forcing a frontline McDonald’s employee to promise not to leave for Burger King is, in a word, silly. Asking a senior executive responsible for confidential business strategy or a high-level engineer developing trade secret tech not to take that information to a direct competitor, on the other hand, certainly seems reasonable. The Governor’s statements suggest that any newly-proposed legislation in New York will take this balance into account, particularly as lawmakers distinguish between working-class, low-wage workers and higher-level employees and job functions.

What Should Employers Do?

Employers should monitor new legislative updates—but don’t lose sight of the forest for the trees. In

our experience, the greatest threat to successful noncompete enforcement isn't the legislative or administrative hostility to restrictive covenants now in vogue. Rather, the threat has been employers' failure to consider the longstanding standards that have always governed the use of noncompetes, including by using "one size fits all" agreements for every employee regardless of level or access to information and attempting to tie up employees for too long of a post-employment period. If you haven't done so lately, it is always a good idea to get a handle on the way your company actually deploys restrictive covenants and to make sure that you can specifically defend their use based on facts that are specific to the employees you ask to sign them.

In that sense, employers should review their current agreements and focus on alternatives to noncompetition provisions, including nonsolicitation and confidentiality provision. Governor's Hochul's comments indicate that she would support future legislation geared towards lower income workers rather than executives and other highly compensated employees, who are most likely to harm a former employer by working for a competitor or starting a competing business.

We will continue to update you on all major legislation effecting noncompetition agreements. In the meantime, please reach out to one of our attorneys on our [labor and employment law team](#) for help with reviewing and tailoring your use of noncompetes and other restrictive covenants.