

## Insights

# WASHINGTON, DC BAN ON NON-COMPETES DELAYED TO APRIL 2022 – SEPTEMBER 2021 UPDATE

Sep 14, 2021

## SUMMARY

As we [discussed](#) in our March 2021 update, the District of Columbia's Ban on Non-Compete Agreements Amendment Act of 2020 (the "Act") was expected to become enforceable this fall with the passage of the District's Fiscal Year 2022 budget. Not so fast.

While the new law became "effective," i.e., on the books, on March 16, 2021, its *applicability* – and thus, its *enforceability* – is tied to the budget. As enacted, the Act will not apply and become enforceable until its costs are included in a budget and financial plan, which is at the Mayor's discretion. On June 30, 2021, the Committee on Labor and Workforce Development (the "Committee"), which is responsible for oversight of public and private sector employment issues, [recommended](#) "a delay in the applicability (i.e. practical application/effectiveness of the law) while it considers changes to respond to business community concerns raised after final passage of the underlying law."

On August 23, 2021, Mayor Bowser accepted that recommendation when she signed the Fiscal Year 2022 Budget Support Act of 2021, which postponed the applicability date of the Act to April 1, 2022. This means that the District's ban on non-compete policies and agreements is not enforceable now, and apparently will not be until April 2022 at the earliest.

What's behind the delay? The law [faced](#) a backlash from some members of the D.C. business community, who were particularly concerned about its potential impact on intellectual property rights. Others voiced concerns that the law would prohibit employers from including conflict-of-interest provisions in employment agreements. As the debate heated up over the spring and summer, Councilmember Elissa Silverman, who sponsored the original bill, [proposed](#) the Non-Compete Conflict of Interest Clarification Amendment Act of 2021 (the "Amendment"), which would create a new allowance for "bona fide conflict of interest provisions." Under the Amendment, a "bona fide conflict of interest provision" is

“an otherwise lawful written provision or workplace policy that bars an employee from accepting money or a thing of value from a person during the employee’s employment with the employer because the employer reasonably believes the employee’s acceptance of money or a thing of value from the person will cause the employer to [c]onduct its business in an unethical manner or [v]iolate applicable local, state, or federal laws or rules” (punctuation altered).

The practical effect of this part of the Amendment remains unclear.

The Amendment would also permit broader confidentiality agreements, allowing for agreements that prohibit employees from “disclosing *or using* the employer’s confidential, proprietary, or sensitive information, client list, customer list, or a trade secret.” As passed in March 2021, the Act only permits confidentiality agreements that prohibit employees from “disclosing” – but not from “using” – an employer’s intellectual property.

What’s next? Two things to keep in mind: *First*, the Act is not retroactive. Until at least April 1, 2022, employers and employees may enter into non-competes under D.C. law as it stands (i.e., pre-March 16, 2021). *Second*, the final form of the Act remains to be seen. Although only Councilmember Silverman’s Amendment has been introduced so far, it remains before the Committee with 7 months to go before the new April 1, 2022 deadline, opening the door to further debate and refinement. Councilmember Brooke Pinto, who does not sit on the Committee, has already voiced support for additional amendments. One thing is certain: whatever final form it takes, the Act will significantly alter the non-compete landscape in the District. Employers in the D.C. business community should be prepared for that reality. We will continue to monitor and report as the Non-Compete Act makes its way to final approval and applicability.

## **RELATED PRACTICE AREAS**

- Litigation & Dispute Resolution
- Non-Compete, Trade Secret & Employee Unfair Competition

---

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.