

Insights

WASHINGTON STATE BANS NONCOMPETE AGREEMENTS

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Noncompetition agreements have become increasingly disfavored in Washington in recent years, and last week, Washington Governor Bob Ferguson took it one step further by signing HB 1155 into law. The new law, which will take effect on June 30, 2027, bans nearly all noncompetition agreements with Washington employees, including existing noncompetes that were executed prior to the law's effective date

By October 1, 2027, covered employers must make "reasonable efforts" to provide written notice to all current and former employees and independent contractors with a noncompete still within its effective window that the noncompete restriction is "void and unenforceable."

Who is covered?

The statute covers any business entity that engages in activity in Washington and prohibits entering into a noncompetition covenant with any person working in the state of Washington, including employees *and* independent contractors.

What is a noncompetition covenant?

The new law expands the definition of a noncompetition covenant. A prohibited noncompetition covenant includes a written or oral covenant, agreement, or contract that:

- Prohibits or restrains an employee or independent contractor from engaging in a lawful profession, trade, or business;
- Prohibits, directly or indirectly, the acceptance or transaction of business with a customer; or
- Requires an individual to return, repay, or forfeit any right, compensation, or benefit as a consequence of the individual engaging in a lawful profession, trade, or business.

What is not a noncompetition covenant?

The law does not impact or prevent an employer from entering into:

- Nonsolicitation Agreements: Agreements prohibiting an employee from soliciting (1) a fellow employee to leave the employer or (2) a current or prospective customer, patient, or client with whom the employee developed a direct relationship as a result of their work for the employer, so long as they expire no later than 18 months after the termination of employment.
- Nondisclosure Agreements: Agreements prohibiting the disclosure of trade secrets or inventions.
- Agreements to Repay Educational Expenses: Written agreements to repay out-of-pocket education costs, so long as the agreement expires within 18 months of the employee's start date, prorates repayment to the remaining time of the 18-month period, and releases the employee from the obligation if the separation is based on "good cause" under RCW 50.20.050.
- Confidentiality Agreements

What about transactions?

The new law does not impact or prevent:

- Covenants related to the sale, acquisition, or divestment of an ownership interest of 1% or more in a business.
- Covenants contained in a franchise agreement that complies with RCW 19.100.020(1).

Enforcement

The new law creates a private right of action for a violation, with actual damages or a statutory penalty of \$5,000; attorneys' fees; and costs. We can expect to see a surge of class action lawsuits filed next fall against companies who do not comply with the requirement to notify workers that their noncompete is void.

Next Steps for Employers

Employers should begin preparing now for the law's June 30, 2027 effective date.

- Determine who will need to receive notice by October 1, 2027.
- Prepare the written notice.
- Review existing employment agreements, confidentiality and invention assignment agreements, TRAPs, separation agreements, and handbooks to identify any clauses that may qualify as noncompetition covenants under the new law's definition.

- Consider immediately discontinuing (or significantly limiting) the use of noncompetition covenants – while the law does not go into effect until next year, any party who signs such an agreement between now and then will need to be provided notice that their agreement is void.
- Review training materials and HR presentations to remove references to noncompetition agreements, as it is also a violation of the new law for an employer to suggest that an employee is subject to a noncompetition covenant.

RELATED CAPABILITIES

- Employment & Labor
- Non-Compete, Trade Secret & Employee Unfair Competition

MEET THE TEAM



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