

Virginia Joins the National Trend Limiting Noncompete Agreements

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Employers who do business in Virginia and have employees who work in that jurisdiction need to be aware of a law which will soon be enacted limiting the use of noncompete agreements.

It is no secret that there is a growing national trend towards limiting the use and enforceability of noncompete agreements, predicated upon what legislatures and courts deem to be unfair restrictions on employee mobility and freedom of competition in the marketplace.

Thus, on March 4, 2026, the Virginia legislature approved Senate Bill 170, which contains a detailed regimen of restrictions imposed on employers who have employees in the Commonwealth.

So, in general, what does this piece of legislation do, which is expected to be signed into law by Governor Spanberger? Well, there are a number of detailed nuances to the legislation, and they are too numerous to be enumerated here, but the following are merely highlights of the newly anticipated restrictive law:

- The new law, if enacted as expected, would prohibit noncompetes for any employee who is laid off without severance benefits or other monetary payment, unless such employee is terminated for “cause” (both “severance benefits” and “cause” are undefined in the law)
- The new law would become effective for all noncompete provisions entered into, amended, or renewed AFTER July 1, 2026, but significantly does not apply retroactively to any agreement entered into prior to July 1, 2026
- Interestingly, the law applies to all employees, irrespective of their rank or station in the company, even those in senior management positions
- The law does not prohibit non-solicitation of customers or employees
- Employers who violate the provisions of the law face the possibility of being sued in a private right of action where the claimant can obtain injunctive relief, liquidated damages, backpay, and counsel fees
- Additionally, under the law, the Virginia Commissioner of Labor and Industry may impose a civil monetary penalty of \$10,000 for each violation

Employers doing business and employing individuals in Virginia need to closely monitor developments with the new law, and if enacted as expected, be prepared to carefully draft noncompete provisions in accordance with what appears to be a very restrictive legislative scheme. Because there are many open questions surrounding the details of the new law, it is strongly advised to seek qualified employment counsel when contemplating the use of noncompete provisions in the Commonwealth of Virginia.

