

Virginia Moves to Further Restrict Non-Compete Agreements

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Virginia continues to restrict non-compete covenants. On April 13, 2026, Governor Spanberger signed Senate Bill 170 ("SB 170") [SB170 - 2026 Regular Session | LIS](#), into law. SB 170 will materially limit the enforceability of non-compete agreements in Virginia moving forward.

For years, Virginia courts enforced narrowly tailored non-compete agreements, and employers adopted non-competes across industries as a risk-management tool. As of July 1, 2026, any company or employer doing business in Virginia should reexamine the use of non-competes. In many cases, it will no longer make economic or operational sense to use non-compete provisions.

Under amended Virginia Code § 40.1-28.7:8, a non-compete becomes unenforceable if an employee is terminated without cause and the employer has not provided severance or other disclosed monetary compensation. This rule applies to all employees, regardless of seniority, compensation level, or role. Importantly, the law will not be retroactive, meaning that non-compete agreements in effect, and unmodified, before July 1, 2026, will remain enforceable.

For Virginia business owners and HR professionals, the most important takeaway is this: a non-compete can now be perfectly drafted and still fail entirely based on how the employee's departure is handled. If your termination process is misaligned with your employment agreements, you may lose the very protection you thought you had purchased.

The first practical impact of SB 170 is that termination decisions are now legally intertwined with enforceability. Employers should no longer wait until an employee resigns or is separated to consider whether a non-compete will achieve the employer's goals. That analysis needs to happen at the front end, when the employer makes an offer to an employee. Employers should be asking themselves whether they are truly willing to commit, in advance, to paying severance to preserve post-employment restrictions. Employers should also decide which employees actually present a competitive threat worth that cost, rather than automatically rolling non-compete language into every offer letter.

A second major shift is that SB 170 extends far beyond the "low-wage employee" focus of earlier Virginia legislation. This law applies just as much to executives, senior managers, sales professionals, and business development employees as it does to entry-level staff. Employers who assume their leadership team or top performers are insulated from these changes are mistaken. Virginia law no longer treats non-competes as a default option even at the highest levels of an organization, and employers should revisit every existing assumption about who may be bound by post-employment restrictions.

Unfortunately, SB 170 also leaves critical questions, as key terms in the statute are undefined. For example, SB 170 does not explain what constitutes a "for cause" termination, nor does it specify how much severance—or what type of compensation—is sufficient to preserve enforcement. That ambiguity virtually guarantees litigation. Employers relying on vague termination

language, inconsistent cause determinations, or ad hoc severance arrangements are setting themselves up for disputes they are unlikely to win, particularly given that the statute authorizes attorneys' fees and penalties of up to \$10,000 per violation.

As a result of SB 170, non-competes are no longer "free." Employers who want them to remain enforceable must ensure compliance and planning in all hiring decisions and offer letters. Employers should clearly define what constitutes for cause termination events in employment agreements, commit to severance or other post-separation compensation in advance, and disclose separation pay or compensation at the time the employee signs the employment agreement and non-compete. In many cases, once these costs are identified, businesses will decide that a non-compete no longer makes economic sense for a given role.

Between now and July 1, 2026, Virginia employers should take several concrete steps. First, review employment agreements and non-compete templates for compliance with SB 170. Existing agreements should be inventoried so decision-makers know which employees are subject to post-employment restrictions and which agreements may be amended or renewed in a way that triggers SB 170.

Second, Employers should tighten termination provisions in employment agreements. Consider clearly defining for cause termination events to align with actual business practices and goals. Employers should resist the temptation to automatically renew non-competes without reevaluating whether they are necessary and sustainable under the new framework.

Finally, HR, legal, and management teams should be aligned before any termination decision involving a non-compete holder is made. If a company intends to rely on a non-compete provision going forward, it must either have a well-documented for-cause termination or pay severance exactly as disclosed in the employment agreement. Deviating from that plan after the fact is likely to render the restriction unenforceable.

Beginning July 1, 2026, offer letters and employment agreements must be drafted with SB 170 squarely in mind. Severance obligations should be explicit, termination standards should be unambiguous, and the agreement should integrate cleanly with any separation or release documents the company typically uses. Ambiguity will not benefit the employer under this statute.

Finally, as an alternative to non-compete provisions, consider refocusing your post-employment protective strategies. Confidentiality agreements, trade secret protections, data access controls, and narrowly tailored non-solicitation provisions often provide more reliable and less expensive protection than non-competes under Virginia's current legal landscape. For some employers, shifting focus to these tools will reduce litigation risk while still safeguarding key business interests.

SB 170 continues Virginia's clear policy trend favoring employee mobility and limiting post-employment restraints. Non-competes are not gone, but they are no longer the default solution they once were. Employers who proactively adjust their agreements and offboarding strategies can still protect themselves effectively. Those who ignore these changes risk expensive disputes, unenforceable contracts, and penalties that could have been avoided with thoughtful planning.