

Virginia's Non-Compete Restrictions Are Now in Effect: What Employers Need to Do Now

July 6, 2026
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Virginia Governor Abigail Spanberger signed Senate Bill 170 on April 13, 2026. In the weeks that followed, however, Virginia's non-compete landscape shifted even further. On May 14, 2026, Governor Spanberger also signed SB 128, which expands restrictions on non-competes by prohibiting such agreements altogether for healthcare professionals. Both laws took effect on July 1, 2026.

What initially appeared to be a targeted modification to enforceability now operates as a broader restructuring of how non-competes function in Virginia.

Non-Competes Are Now Conditional

Under SB 170, a non-compete is unenforceable if an employer terminates an employee without cause unless the employer provides severance or other monetary consideration that was disclosed at the time the agreement was executed. Notably, the statute does not define "cause" or establish a minimum severance amount. The legislation expands upon Virginia's existing restrictions on non-competes for low-wage and non-exempt employees.

The statute applies broadly to all employers and reflects a continued state-led shift away from treating non-competes as baseline protections for employers. Instead, Virginia employers must plan, price, and document non-competes at the outset of the employment relationship.

In practice, employers must determine at the time of hire whether a particular role justifies a post-employment restriction and whether they are prepared to commit financially to preserving that restriction in the event of a no-cause separation. If that determination is not made and documented from the beginning, the restriction may be unenforceable.

Termination Decisions Now Control Enforceability

One of the most consequential effects of SB 170 is that enforceability is no longer determined solely by the language of an agreement. It is now directly tied to how the employment relationship ends.

A without-cause termination without the required pre-disclosed payment will render a non-compete unenforceable. A for-cause termination, by contrast, may preserve enforceability, but it also creates the potential for disputes over whether the termination was properly classified as for cause. This creates a direct connection between contractual terms, defined standards for "cause," and actual termination practices.

As a result, even carefully drafted agreements may fail if operational decisions are not aligned with the terms of the restriction.

Healthcare Non-Competes Are Also Eliminated

At the same time, SB 128 imposes a near-total prohibition on non-competes for healthcare professionals, broadly defined as “any person licensed, registered, or certified by the Board of Medicine, Nursing, Counseling, Optometry, Psychology, or Social Work.” Employers who violate this prohibition may face civil penalties, fee exposure, and private enforcement risk.

While confidentiality agreements and limited non-solicitation provisions remain available, non-competes are no longer a viable tool in this sector. This development reflects a broader willingness to restrict non-competes not only by circumstance, but by industry.

A Broader Shift Toward Data Protection

These developments build on a broader trend: courts and legislatures are placing less emphasis on where employees work and greater emphasis on whether employers are meaningfully protecting legitimate business interests.

Virginia’s framework reflects that shift. While it limits and conditions non-competes, it leaves intact protections for confidential information and trade secrets, making information access, use, and safeguarding the primary battleground. Employers that rely solely on restrictive covenants, without corresponding data protection efforts, may find those agreements increasingly insufficient.

Bottom Line

Non-competes in Virginia remain viable, but they are no longer passive protections. They must be deliberate, supported, and aligned with business decisions from hiring through separation.

At the same time, SB 170 and SB 128 shift the focus toward information governance and fundamentally change how non-competes operate in practice. Employers that pair narrowly tailored agreements with strong data protection practices will remain well-positioned. Those that do not risk discovering that their protections are unenforceable.