

Washington State Bans Most Non-Competes Retroactively, But Not Until June 2027

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Washington State recently adopted legislation banning most non-compete agreements, including non-competes in existing agreements, but the ban does not go into effect until June 2027. Here are some key questions and answers about the Washington statute:

What does the statute do? The statute provides that all “noncompetition covenants” are void and unenforceable. Any employer that enforces, attempts to enforce or threatens to enforce a noncompetition covenant against an employee or worker violates the statute. It also is a violation for an employer to represent that an employee or worker is subject to a noncompetition covenant or to enter into (or attempt to enter into) a noncompetition covenant with an employee or worker.

Who is covered by the statute? The statute provides that the legislature intends to ban noncompetition covenants “for all Washington-based workers and businesses.” It applies to all employees and independent contractors who are based in Washington state. It is not clear if the legislature intends to try to ban noncompetition covenants between businesses based in Washington and employees who are based in other states.

What types of agreements are banned? The statute bans “noncompetition covenants,” and it defines noncompetition covenants broadly. The definition includes:

- any agreement that prohibits or restrains an individual from engaging in a lawful profession;
- any agreement that prohibits an employee from accepting or transacting business with a customer even if the agreement does not explicitly preclude an individual from working for a competitor; and
- any provision in an agreement that threatens, demands, or requires an individual to return, repay, or forfeit any right, benefit, or compensation as a consequence of the individual engaging in a lawful profession.

Thus, in addition to banning “traditional” non-compete agreements, the statute also bans agreements that preclude employees from servicing clients and

agreements in which employees forfeit benefits or compensation, like equity awards, if they work for another company.

Does the ban apply to agreements not to solicit employees or clients? No, as long as the non-solicit agreement is narrowly drafted and does not fall within the definition of noncompetition covenant. The statute explicitly states that the definition of noncompetition agreement does not include an agreement between an employer and employee that prohibits solicitation of other employees of the employer. The statute also states that the definition of noncompetition agreement does not include an agreement between an employer and employee that prohibits solicitation of any current or prospective client of the employer if the employee “established or substantially developed a direct relationship with” the client through the employee’s work for the employer and the restriction lasts for no more than 18 months from termination of employment.

Does the ban apply to confidentiality agreements or covenants prohibiting disclosure of trade secrets? No, confidentiality agreements and covenants prohibiting the use or disclosure of trade secrets or inventions do not fall within the definition of noncompetition covenants and will remain enforceable to the same extent as they are enforceable prior to the enactment of the statute.

Does the statute carve out non-compete agreements in connection with the sale of a business? Yes, covenants entered into in connection with the purchase or sale of the goodwill of a business or an ownership interest in a business are excluded from the definition of noncompetition covenant if the person signing the covenant acquires or disposes of an ownership interest representing at least one percent of the business.

When does the ban take effect and will it apply to existing noncompetition covenants? The effective date of the statute is June 30, 2027. This gives employers a significant amount of lead time to prepare for the ban on noncompetition covenants. Once the legislation becomes effective on June 30, 2027, it not only will ban new noncompetition covenants, but it also will void existing noncompetition covenants.

Do employers need to notify employees or independent contractors in Washington who have existing noncompetition covenants about this development? Yes, the statute includes a notification

requirement. Employers have until October 1, 2027 to make reasonable efforts to give written notice to all current and former employees and independent contractors who have active noncompetition provisions that those provisions are void and unenforceable.

What are the potential consequences if an employer violates the statute? The statute provides a private right of action for any person aggrieved by a violation of the statute. The state attorney general also may pursue relief against an employer for violating the statute. If a court or arbitrator concludes that an employer violated the statute, then the employer must pay the aggrieved person the greater of actual damages or \$5,000, plus reasonable attorneys' fees, expenses and costs incurred in the litigation or arbitration. However, legal proceedings commenced before June 30, 2027 will be governed by the statute that is in effect immediately prior to June 30, 2027.

What should employers with employees in Washington state do? The Washington legislature has given employers a significant amount of time to prepare for the implementation of the ban on noncompetition covenants. Initial steps to prepare include:

- Employers should identify existing agreements with employees and independent contractors in Washington that will be impacted by the statute and begin planning to revise those agreements.
- Employers also should consider options to replace noncompetition covenants in agreements with employees and independent contractors in Washington and to make use of appropriate non-solicitation and confidentiality agreements.
- If an employer will still have noncompetition covenants in place with employees in Washington after June 30, 2027, then the employer should prepare a plan to notify those employees that the noncompetition covenants are void and unenforceable.

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