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Employers must soon comply with restrictions on noncompetition agreements—is your business ready?

By Jessica Schachter Jewell, Neal McNamara and Caitlyn Horbert

Earlier this month, Rhode Island became the most recent state to join the emerging trend of legislatures placing limits on employee noncompete agreements when Governor Gina Raimondo signed the Rhode Island Noncompetition Agreement Act (the Act) into law. Because the Act creates the state's first comprehensive statutory scheme addressing noncompetition agreements in the workplace, employers with Rhode Island employees should familiarize themselves with the Act.

Beginning in January 2020, noncompetition agreements will be unenforceable against (1) an employee who is classified as non-exempt under the Fair Labor Standards Act, (2) undergraduate or graduate students participating in an internship or other short-term employment relationship, (3) employees age 18 or younger, or (4) low-wage employees, defined as individuals earning no more than 250% of the federal poverty level. (Today, that would mean someone whose average annual compensation (excluding overtime pay) is not more than $31,225.[1]) Notably, the law does not affect a business' ability to enter into noncompetition agreements with properly classified independent contractors or place limits on the use of non-solicitation provisions, forfeiture agreements or nondisclosure or confidentiality agreements. Additionally, employers and departing employees may enter into a valid noncompete agreement, as long as the separating individual is provided a seven-business day revocation period in which the employee can rescind his or her acceptance of the agreement. If an employer has an agreement that contains an unlawful noncompetition provision but also contains lawful provisions (e.g., a nonsolicitation or confidentiality provision), this law will not render the remaining lawful provisions void.

As noted, Rhode Island's law reflects the emerging trend of restricting the use of noncompetition agreements with respect to certain groups of employees. Within the past year, New England has become a hot bed of activity in this regard—Maine, Massachusetts, and New Hampshire have each enacted similar laws restricting the enforceability of noncompetition agreements. But, as with most employment laws, the restrictions and definitions vary by state, so employers operating in any of these other jurisdictions need to ensure they comply with the appropriate law when entering into

[1] Effective January 11, 2019, the poverty level for an individual is $12,490. https://aspe.hhs.gov/poverty-guidelines

new agreements. For example, Rhode Island and Massachusetts both restrict the enforcement of noncompetition agreements against non-exempt employees, college interns, and employees under 18, but the Maine and New Hampshire laws do not. And, most notably, Maine, New Hampshire, and Rhode Island laws restrict the enforcement of noncompetition agreements against low-wage employees, but each state defines the term "low-wage employee" differently. And, Rhode Island businesses might need to draft agreements to comply with the more restrictive Massachusetts law, as it covers Massachusetts residents working across state lines. [2]

Although the Rhode Island law does not take effect until January 2020, employers that utilize noncompetition agreements and have employees in Rhode Island should be proactive in making adjustments to policies and practices that require employees to sign noncompetition agreements. It is also a good time to ensure that individuals are properly classified so that employers do not inadvertently run afoul of this new law.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

- Jessica Schachter Jewell at **jsjewell@nixonpeabody.com** or 401-454-1046
- Neal McNamara at **nmcnamara@nixonpeabody.com** or 401-454-1019

[2] See our August 2018 alert, "Non-competition reform in Massachusetts," available here.