# Nevada Amends Non-Compete Statute To Further Protect Employees

## Labor & Employment Law Update

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Effective May 25, 2021, the State of Nevada enacted amendments to the Nevada Unfair Trade Practice Act that address non-compete agreements. Prior to the new amendments, Nevada law provided that a non-competition covenant is deemed void and unenforceable unless: it is supported by valuable consideration, it does not impose any restraint that is greater than required for the protection of the employer, it does not impose any undue hardship on the employee, and it imposes restrictions that are appropriate in relation to the valuable consideration supporting the non-competition covenant. These provisions of the statute were not amended and therefore these rules still apply in Nevada.

The statute, prior to the recent amendments, also provided that a non-competition covenant may not restrict a former employee from providing service to a former customer or client if the former employee did not solicit the former customer or client, if the customer or client voluntarily chose to leave and seek services from the former employee, and if the former employee is otherwise complying with the limitations of the covenant as to time, geographic scope, and scope of activities restrained. The new legislation amends this provision slightly to provide not only that a non-competition covenant may not restrict this type of activity, but that an employer may not bring an action to enforce such a restriction. This would appear to be merely a clarification of existing law.

The new legislation also provides for the first time that a non-competition covenant may not apply to an employee who is paid solely on an hourly wage basis, exclusive of any tips or gratuities. This is similar to many states that have sought to ban or severely restrict restrictive covenants for low wage employees.

Prior Nevada law provided that a court "shall" revise an overbroad covenant to render it reasonable. The new legislation modifies this slightly to clarify that this type of "blue pencil" approach applies where the employer brings an action to enforce the covenant, or where the employee brings an action to challenge it. It also emphasizes that the undue hardship on the employee must be considered. Again, this is a subtle revision that is apparently intended to make sure that the former employee's interest in avoiding undue hardship is given due consideration by a court interpreting the statute.

The new legislation also contains a new section which provides that, if either an employer or an employee brings an action to enforce or challenge a non-competition covenant, and the court finds that the covenant either applies to an hourly wage employee or attempts to restrict an employee from dealing with former customers whom the employee did not solicit, that the court "shall" award the employee reasonable attorney's fees and costs. This, too, is similar to legislation that has been passed in other states that seek to level the playing field for the benefit of former employees by providing them with fee-shifting even if the contract does not provide for it.

Overall, the new Nevada legislation makes modest but real improvements for former employees, and follows the clear trend across the country to ban non-competes for low wage employees and give employees the right to recover attorney's fees in this type of litigation.

We will continue to monitor legislative developments on non-competes across the country.