New Oregon Non-Compete Law Further Restricts Non-Competes

Labor & Employment Law Update

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Over the past several years, the State of Oregon has enacted significant statutory limits on non-compete agreements. Under ORS 653.295, as in effect until recently, a non-compete was "voidable and [could] not be enforced by a court of this state" unless:

- The employer advised the employee in a written employment offer at least two weeks before the first day of employment that a non-competition agreement is required, or the non-competition agreement is executed upon the employee's bona fide advancement;
- The employee is exempt from Oregon minimum wage and overtime law;
- The employer has a protectable interest, which is generally limited to access to trade secrets or competitively sensitive confidential information;
- The employee makes more than the median family income for a family of four as determined by the U.S. Census Bureau;
- The employer provided the employee with a signed copy of the agreement within 30 days after the last day of employment; and
- The duration of the non-compete does not exceed 18 months.

Importantly, the restrictions described above generally do not apply to covenants to solicit customers or employees of the prior employer. Additionally—and notwithstanding the foregoing restrictions—Oregon allows "bonus restriction agreements," a type of restriction, permitted only for managers and other employees with significant client contact and high-level knowledge of the employer's business operations, which provides that the employee may forfeit limited types of bonus income, such as profit sharing, if the employee violates post-employment covenants that are reasonable in time and geographic scope.

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Under the amended statute, enacted through Oregon Senate Bill No. 169 which was signed into law by the Governor of Oregon on May 21, the existing restrictions will become even more aggressive. The new rules include:

Instead of non-competition agreements being "voidable" by a court, the new law makes them "void and unenforceable" unless statutory conditions are met.

The new law shortens the maximum period of restriction for non-compete agreements from 18 months to 12 months. This requirement does not apply to covenants not to solicit employees or customers.

The amendments increase the income threshold for enforcement of non-compete agreements to $100,533, adjusted annually for inflation. In contrast, the prior version of the statute used the median income of a family of four per the U.S. Census Bureau. This requirement does not apply to covenants not to solicit employees or customers.

The new law also provides that, notwithstanding the various limitations on non-compete agreements, a non-compete agreement is generally enforceable for up to 12 months if the employer agrees in writing to provide the employee, for the period of restriction, with the greater of at least 50% of the employee's annual gross base salary and commissions at the time of termination, or 50% of $100,533, adjusted annually for inflation.

We will continue to monitor legislative developments in Oregon and the many other states where non-compete agreements are the subject of increasing legislative scrutiny.