

State Bill Would Limit Restrictive Covenants With Physicians

Labor & Employment Law Update

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Historically, a majority of states have allowed employers to use restrictive covenants with physicians—and only a handful of states (among them: Delaware, Massachusetts, and Rhode island) have prohibited that practice in whole or in part. However, as discussed in recent blogs, the current trend is for state legislatures

to pass new laws that regulate and limit non-compete agreements, often as they relate to lower wage employees or employees below certain income thresholds.

Now, in what may be a harbinger of future legislative efforts to regulate restrictive covenants in the health care industry, the State of Louisiana is considering a bill that would specifically limit restrictive covenants for physicians.

The legislation at issue, Louisiana House Bill No. 483, would completely ban any type of contract that restricts the practice of medicine by “primary care physicians,” a term the bill defines as including doctors practicing family medicine, general internal medicine, general psychiatry, general pediatrics, obstetrics, and gynecology. It would also ban such agreements for any physician employed by the state, such as a state university hospital.

The legislation also sets limits on contracts that restrict the practice of medicine by “physician specialists,” which includes any physician not included in the definition of “primary care physician.” For “physician specialists,” a restrictive agreement would become unenforceable when the physician has put in three years of service to the employer. Practitioners sometimes call this type of arrangement a “burn off” restriction. Such restrictions are viewed as a way to allow the employer to realize the value of its investment in the employee over time, while allowing the employee to eventually be free of the post-employment restrictions.

The bill also sets limits for buy-out clauses for physician specialists. These are clauses where the physician or the new employer can pay money to the former employer to release the physician from the restrictions. The bill caps buy-out payments at the physician's annual salary for the first year of the restriction, and provides that payments for any additional years are reduced on a pro rata basis.

Finally, the bill sets certain new rules for both "primary care physicians" and "physician specialists," i.e., all physicians. The bill provides that, where any physician is terminated without cause by the employer, the restrictive covenant is unenforceable. It further provides that no restrictive covenant may restrict a physician from practicing within a "restricted geographic area" for a period of more than two years. "Restricted geographic area" is defined as the parish of the physician's primary office location and up to two contiguous parishes. "Parishes" are Louisiana local government districts similar to counties.

This legislation would significantly change Louisiana law as it applies to physicians. Currently, Louisiana, like the majority of states, allows such restrictions to be used with physicians provided certain conditions are met. The new legislation would completely ban such agreements for primary care physicians and set significant limits on the use of such agreements with physician specialists.

We will keep readers apprised of further developments with the Louisiana legislation, as well as legislation in other states related to restrictive covenants in the health care industry.

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