

## WASHINGTON

### NEW LAW: Washington Enacts New Noncompete Law

On May 8, 2019, Washington Governor Jay Inslee signed [HB 1450](#) into law. With this new law, Washington is the latest state to pass legislation governing noncompete agreements. This new law, which goes into effect on January 1, 2020, applies to any legal proceeding that is brought relating to a noncompete agreement after that date – this means that it will apply retroactively to non-compete agreements executed before January 1, 2020 if the employer decides to attempt to enforce the noncompete provisions after January 1, 2020.

Under the new law, starting January 1, 2020, a “noncompetition covenant” in any type of employment (or work) agreement will be unenforceable against:

- Employees who earn less than \$100,000 per year and
- Independent contractors whose earnings from the company are less than \$250,000 per year.

NOTE: The above amounts can be adjusted annually for inflation.

Assuming that the above financial threshold for employees is met, “noncompetition covenants” are unenforceable for “highly paid employees” (i.e. employees who make more than \$100,000 per year) unless:

- The employer discloses the terms of the covenant in writing to the prospective employee no later than the time of the acceptance of the offer of employment and, if the agreement becomes enforceable only at a later date due to changes in the employee's compensation, the employer specifically discloses that the agreement may be enforceable against the employee in the future; or
- If the covenant is entered into after the commencement of employment, unless the employer provides independent consideration for the covenant.

Finally, a “noncompetition covenant” with a duration of over 18 months following termination is presumed unreasonable and unenforceable.

For purposes of the statute, a “noncompetition covenant” is defined as “every written or oral covenant, agreement, or contract by which an employee or independent contractor is prohibited or restrained from engaging in a lawful profession, trade, or business of any kind.” It does not include:

- A non-solicitation agreement (i.e. an agreement between an employer and employee that prohibits solicitation by an employee, upon termination of employment: (1) of any employee of the employer to leave the employer; or (2) of any customer of the employer to cease or reduce the extent to which it is doing business with the employer);
- A confidentiality agreement;
- A covenant prohibiting use or disclosure of trade secrets or inventions;
- A covenant entered into by a person purchasing or selling the goodwill of a business or otherwise acquiring or disposing of an ownership interest; or
- A covenant entered into by a franchisee when the franchise sale complies with Washington law.

The new law also contains restrictions against employers’ moonlighting policies. Under the new law, employers are prohibited from enforcing a moonlighting policy against an employee who earns less than two times the state minimum wage. This restriction does not apply where the specific services to be offered by the employee:

- Raises issues of safety for the employee, coworkers, or the public, or
- Interferes with the reasonable and normal scheduling expectations of the employer.

It is recommended that employers who have noncompete covenants review those agreements and ensure that they are compliant with the new requirements.

It is further recommended that employers with moonlighting policies reviewing those policies and update them to comply with the new salary threshold.