

February 20, 2025

New York Bill to Ban Non-Competes Introduced in State Legislature

- Legislation to ban most non-competes prospectively in New York has once again been introduced in the state Senate.
- The current version of the bill would exempt certain employment non-competes for highly compensated individuals and certain non-competes related to a sale of business.

On February 10, 2025, New York State Senator Sean Ryan introduced a new bill ([S4641A](#)) that would amend state labor law to prospectively ban most employment-related non-competes in New York. This comes after Governor Hochul vetoed non-compete [legislation](#) sponsored by Senator Ryan in 2023. The current bill has several significant differences from the 2023 bill that appear to be designed to address concerns Governor Hochul expressed about the 2023 ban in her veto message.

The bill defines “non-compete agreement” as “any agreement, or clause contained in any agreement, between an employer and a covered individual that prohibits or restricts such covered individual from obtaining employment, after the conclusion of employment with the employer included as a party to the agreement.”

- The current version of the bill would **prospectively ban non-compete agreements for covered individuals, effective 30 days after the bill is signed by the governor**. Non-compete agreements entered into or modified on or after this date would be invalid, unless subject to an exception, **but existing non-compete agreements may remain in effect**. The exceptions in the new bill appear to be designed to address concerns Governor Hochul expressed about the 2023 legislation.
 - A “covered individual” is “any person *other than a highly compensated individual* who, whether or not employed under a contract of employment, performs or has performed work or services for another person on such terms and conditions that they are, in relation to that other person, in a position of economic dependence on, and under an obligation to perform duties for, that other person.”
 - The bill would **not ban non-competes for “Highly Compensated Individuals” (HCIs)**, other than health-related professionals and non-management broadcast industry employees, **as long as they are reasonable in time, geography and scope**. HCIs are defined as those receiving “average annualized rate of cash compensation determined by the income listed on the individual’s three most recent W-2 statements and, where applicable, K-1 statements” of \$500,000 or more. **Permitted non-competes with HCIs may not extend longer than one year following termination of services and must provide for payment of salary during the period of enforcement.**

Notably only “salary” must be paid during the non-compete period. This is a different from total “cash compensation” which may be taken into account in determining who is an HCI. An employee who receives significant annual cash compensation in bonuses could meet the HCI definition while having a lower salary to be paid during the non-compete period.

- Non-competes would be permitted in the M&A context, but on a limited basis. The bill would **not ban non-competes related to the sale of a business as long as the seller owns at least 15% of the business, or for the sale or disposition of a**

majority of an ownership interest by a partner of a partnership or member of a limited liability company (LLC) as long as the partner or member owns at least 15% of the partnership or LLC. As currently drafted, the bill's one-year limit and the requirement of salary payment during the restrictive period could be read to apply to permitted sale-of-business non-competes.

- As with the previous bill, **fixed-term employment agreements, client non-solicitation agreements and agreements to protect against the disclosure of trade secrets or confidential and proprietary client information are permitted, provided that such agreements do not otherwise restrict competition in violation of the ban.** The bill is silent about employee non-solicitation agreements.
- The bill would create a **private right of action** for covered individuals to sue in court for violations of the ban, and accords jurisdiction to courts to order injunctive relief and payment of (i) liquidated damages (up to \$10,000 for each affected covered individual), (ii) lost compensation, (iii) compensatory damages and (iv) reasonable attorneys' fees and costs.
- The bill would **prohibit non-New York choice-of-law/choice-of-venue provisions** that would avoid or limit the requirements of the ban for any covered individual who resided or was employed in New York for 30 days immediately preceding the cessation of their employment, including remote workers who report to a New York worksite/office or New York-based supervisor.
- The bill also would **require employers to post conspicuous notice** of the protections and rights granted to employees under the non-compete ban. Effective 180 days after its enactment, the bill would task the New York Department of Labor with developing such a notice that shall be provided to employers for distribution to employees.
- The bill's ban on non-competes, should it become law, will not have any retroactive effect on pre-existing non-competes, and will apply prospectively to void non-competes "sought, required, demanded or accepted" after the effective date of the law. If the law goes into effect, employers seeking to rely on pre-existing non-competes would want to avoid modifying or amending such agreements after the law's effective date.

We are monitoring the bill and related developments and plan to provide further updates, including in response to client inquiries.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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