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Legal Alerts

Important Changes to Washington's Noncompete Law

03.25.24

A bill amending Washington's noncompete law (RCW 49.62) goes into effect on June 6, 2024. One of the changes will require prompt review and likely revisions of existing non-solicitation agreements.

Background

Since 2020, Washington has limited noncompete agreements to highly compensated employees (currently $120,559.99 and adjusted thereafter for inflation) and limited their duration to 18 months. The 2020 law also allowed lawsuits against employers who try to enforce a prohibited agreement or who present a new agreement that would not comply with noncompete restrictions. These requirements did not apply to non-solicitation agreements, including provisions that prohibit poaching of customers. RCW 49.62.010(5).

This definition led many employers to draft non-solicitation provisions that prohibited employees from directly or indirectly soliciting past, present, and even prospective customers post-employment, or from accepting business from those customers.

The Amendment

The amendment to RCW 49.62 changes this common practice. The amendment both limits the definition of non-solicitation agreements to only current customers and adds that provisions prohibiting the acceptance of business from customers will be treated as a noncompete agreement and subject to all the limitations contained in RCW 49.62.

RCW 49.62 and its amendment are retroactive. Noncompetition agreements entered into before the amendment takes effect on June 6, 2024, must comply with the law. As a result, many non-solicitation agreements that were previously exempt from RCW 49.62's limitations on noncompetes will instead be subject to those limitations and will no longer be enforceable against employees who do not reach the compensation threshold.

Next Steps

We advise employers to carefully review their employment, confidentiality, and other agreements that contain non-solicitation clauses. Even if the clause recited the previous definition under RCW 49.62.010(5) precisely, it will be unenforceable and may result in the whole clause being treated as a noncompete.

Please reach out to your Foster Garvey Employment lawyer as soon as possible to review your agreements.

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- New Washington Law Restricts Use and Enforcement of Noncompete Agreements

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