Foster Garvey

Liquor & Cannabis Law

Washington Employers: Your Non-Competes May Soon Be Nonbinding

04.30.19

This blog post was originally published on GSB's website as a GSB client update on April 22, 2019.
(Authors' note: Since the publishing of this post, the legislation outlined below was signed into law by Governor Jay Inslee on May 8, 2019)

On April 17, the Washington Legislature approved sweeping new restrictions on employers' non-competition agreements with their employees and independent contractors.
The bill, now headed to the Governor's desk for his expected signature, means that after January 1, 2020, non-competition agreements (see definition and limitations below) will only be enforceable against higher-paid employees and contractors, and generally can last no longer than 18 months.

The law also carries a sting: If a court or arbitrator finds that a covenant violates these new rules, the entity which seeks enforcement of such a provision may be liable for actual or statutory damages and attorneys' fees and costs.

What this means for Washington businesses

Employers in Washington state that use non-competes should take steps now to ensure those agreements are enforceable before January - reviewing and updating agreements already in place, and ensuring that any new non-competes signed in 2019 comply with the new requirements.

The new restrictions for non-competes

Now, non-competes are governed using a three-prong common law "reasonableness" test. Under the new law, non-competes are void and unenforceable unless each of these requirements is met:

- **Disclosure of terms before employment starts.** Employers must have disclosed the non-compete terms to new hires by the time the employee accepts the offer of employment. For an existing employee, the employer must specifically disclose "that the agreement may be enforceable against the employee in the future" (regulations will likely flesh out this disclosure requirement).

© 2026 Foster Garvey PC. All Rights Reserved.

- **Independent consideration.** Employees must receive independent consideration - some additional pay or benefit they are not already entitled to - for any non-compete entered into after employment starts (required under common law now).
- **Minimum earnings thresholds for employees and independent contractors.** Employees must earn more than $100,000, as reported in the prior year's W2 (for independent contractors, earnings must exceed $250,000). *NOTE**:** These thresholds are subject to inflation increases.*
- **Compensation to laid-off employees**. If the employer wishes to enforce a non-compete against a laid-off employee, the employer must pay the employee's full base salary at the time of layoff through the non-compete period, minus compensation the employee earns through subsequent employment.

The legislation also includes the following provisions:

- Non-competes exceeding 18 months are presumed unreasonable and unenforceable.
- Employees can sue employers who try to enforce flawed non-competes. The law establishes a private right of action, allowing a court to order a violator to pay the greater of actual damages or $5,000, attorney's fees, and costs.
- A non-compete with a Washington-based employee or contractor cannot require any dispute to be adjudicated outside the state, no matter where the employer is based.
- Franchisors are not allowed to restrict franchisees from hiring other franchisees' employees or the franchisor's employees.
- Employers are prohibited from restricting employees who make less than double the minimum wage from having other jobs or work, with limited exceptions.

Non-solicitation and other less restrictive covenants not affected

The legislation defines "non-competition covenant" as agreements which purport to prohibit or restrain an individual from engaging in a lawful profession, trade or business. Importantly, the legislation explicitly *does not* apply to other types of business protection agreements: confidentiality agreements; covenants not to disclose trade secrets and inventions; covenants related to sale of the goodwill of a business or another ownership interest; franchise agreements; and non-solicitation agreements that prohibit a former employee from soliciting the employer's customers or recruiting coworkers to also leave the employer.

Plan ahead now

Even as the legislation heads to the governor's desk for signature, employers can plan ahead and seek legal advice. They should check whether their current non-competes will be enforceable, and, if not, assess whether it is worth the effort and expense to reach new agreements with current employees. Employers should consider whether less restrictive covenants, such as non-solicitation, non-acceptance, and/or confidentiality agreements can adequately protect their business interests.

Posted in Labor and Employment

© 2026 Foster Garvey PC. All Rights Reserved.

Foster Garvey

Tagged as higher-paid contractors, higher-paid employees, independent contractors, non-competition agreements, non-competition covenant, State of Washington, Washington businesses, Washington legislature

Related Areas

- Employment Services

© 2026 Foster Garvey PC. All Rights Reserved.