Articles + Publications | May 13, 2025

Changes to Virginia's Noncompete Statute

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Effective July 1, new legislation will take effect in Virginia imposing further restrictions on the use of covenants not to compete and prohibiting their use for employees who are eligible to receive overtime pay under the Fair Labor Standards Act (FLSA), *i.e.*, non-exempt employees.

Since 2020, Virginia has restricted the use of noncompete agreements for "low-wage employees," defined as any employee whose average weekly earnings fall below the average weekly wage of the Commonwealth. In 2025, that amount is $1,463.10 per week, according to the Virginia Department of Labor and Industry, or $76,081.20 annually. This number increases annually.

Beginning July 1, the definition of "low-wage employee" will expand to include those employees who, regardless of their average weekly earnings, are entitled to overtime compensation under the FLSA for any hours worked in excess of 40 hours in a workweek. In other words, employers will be prohibited from entering into agreements not to compete with employees classified as non-exempt under the FLSA.

The update to the law is not retroactive, and states that it will not invalidate, alter, or otherwise affect any agreements not to compete entered into or renewed before July 1.

Other provisions of the law remain unchanged. The amended law continues to permit employers to enter into agreements not to compete with any employee whose earnings are derived, in whole or in predominant part, from sales commissions, incentives, or bonuses paid to the employee by the employer. The definition of "low-wage employee" also continues to include interns, students, apprentices, or trainees employed, with or without pay, to gain work or educational experience, as well as independent contractors who are compensated for their services at an hourly rate that is less than the median hourly wage for the Commonwealth.

Employers must be aware of their obligations under Virginia law, as they can face civil penalties for entering into, enforcing, or threatening to enforce an unlawful agreement not to compete, including a penalty of $10,000 for each violation, and penalties for violating the law's notice provision (requiring that employers post in the workplace a copy of the law or a summary approved by the Department of Labor and Industry). Additionally, low-wage employees may bring civil actions against any employer that attempts to enforce an unlawful agreement not to compete. In such a case, a court may order the employer to pay liquidated damages, lost compensation, damages, and reasonable attorney fees and costs, as well as injunctive relief.

As July 1 approaches, employers should review how they classify certain positions, confirm whether those positions are exempt or non-exempt under the FLSA, and their existing agreements not to compete, handbooks, policies, offer letters, and other employment agreements to consider whether any action needs to be taken. Please

consult a Troutman Pepper Locke attorney with any questions regarding your organization’s obligations under the amended law.

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