

How Inflation in 2022 Could Affect Non-Compete Agreements in 2023

Labor & Employment Workforce Watch

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Employers do not need to be reminded that inflation reared its ugly head in 2022. Whether it was the price of gas at the pump, food, vehicles, or computers, the cost of doing business certainly went up last year. But increased prices are not the only impacts of inflation. There are hidden costs, too. One less well-known cost is that many multi-state employers may suddenly be at risk of having some of their non-compete agreements run afoul of applicable state law.

As Locke Lord [previously wrote](#), in recent years, there has been a growing trend nationwide towards limiting the enforceability of certain non-compete agreements between employers and their employees. Among other strategies, some state legislatures prohibited the enforcement of non-competes against lower wage earners. [Nevada](#), for example, no longer allows non-compete agreements for hourly workers, while [Rhode Island](#) and [Massachusetts](#) ban non-competes for employees who are classified as nonexempt under the Fair Labor Standards Act. Other states, such as [Illinois](#), set a salary floor (currently \$75,000 per year; \$80,000 per year in 2027), which limits non-compete agreements to only those employees who earn more than these amounts.

Taking a different approach, a few states have specifically tied their minimum earning thresholds for employees to the Consumer Price Index (“CPI”). Generally speaking, the CPI measures the overall change in consumer prices on a subset of goods and services over time. Thus, when inflation hits, the CPI number rises, thereby relieving some categories of workers from their existing non-compete agreements. Here are some state laws to keep an eye on:

- [Oregon](#) – Effective January 1, 2022, Oregon’s non-compete statute reduced the maximum length of a non-compete agreement to twelve months. The legislation also specified a minimum annual gross salary and commission threshold of \$100,533, which is adjusted annually for inflation. For purposes of non-compete enforcement, the statute specifically provides that the employee’s salary is to be viewed “at the time of the employee’s termination of employment.” Any noncompliant agreements will be void and unenforceable.
- [Washington State](#) – Effective January 1, 2020, Washington state implemented an initial annual compensation threshold of \$100,000 for employees and \$250,000 for independent contractors. This amount is also tied to the CPI, with the compensation figures (according to the [Washington State Department of Labor & Industries](#)) rising to \$116,593.18 for employees and \$291,482.95 for independent contractors in 2023.
- [Washington, D.C.](#) – Although the District of Columbia initially proposed a total ban on non-compete agreements in 2020, the final version of its legislation instead set a minimum qualifying annual compensation limit of \$150,000 beginning in 2022. Starting in 2024, this amount will increase in proportion to the CPI.

In light of this growing trend, for example, an employee in Portland, Oregon making ??\$115,000 per year in 2022 is of particular interest. As a result of the 2022 increase to the CPI, ?unless the employer provides the employee a raise in 2023, the employer will risk losing the ability to enforce an already ?existing non-compete agreement that was enforceable just weeks ago, even if the employee ?resigns and joins a direct competitor. ?

The landscape of restrictive covenants continues to ?change with each passing legislative ?session. Being aware of these changes gives employers the ?best chance of protecting their ?intellectual property, their workforce, and their valuable customer ?relationships. Failure to do so, ?however, risks the enforceability of both existing and future non-compete agreements with ?key employees and other members of an employer's workforce.?

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