

A hand pointing at a grid of icons including a gear, a padlock, a cloud with an up arrow, a globe, a mail icon, a group of people, a wrench, a laptop, and a clock. A large hexagon in the center contains the letters 'R+C'.

A Robinson+Cole Legal Update

January 9, 2024

New York Proposed Ban on Non-Compete Agreements Vetoed; FTC and NLRB Proposed Nationwide Bans Remain Pending

Authored by [Ian T. Clarke-Fisher](#), [Trevor L. Bradley](#), and [Stephen W. Aronson](#)

On December 22, 2023, New York Governor Kathy Hochul vetoed proposed legislation that would have banned all employee non-compete agreements in New York. In our [June 2023 Legal Update](#), we outlined the proposed legislation that would have prohibited employers from entering into non-compete agreements with their employees in New York (the Bill). If signed by the Governor, New York would have become the fifth state to outlaw employee non-compete agreements, joining California, Minnesota, North Dakota, and Oklahoma. In her veto, the Governor explained that, while she supports limits on non-compete agreements for “middle-class and low-wage workers, protecting them from unfair practices that would limit their ability to earn a living,” the Bill went too far to gain the Governor’s support. Facing pressure from Wall Street, hospitals, and business groups, the Governor criticized the legislature’s total ban and “one-size-fits-all approach.” Negotiations with the legislature stalled on an appropriate compensation threshold and exceptions, for example, allowing non-compete agreements in connection with the sale of a business.

As we noted in our prior legal update, the Bill did not include an exception for non-compete agreements entered in connection with a sale of a business, which is commonplace, and did not address New York’s forfeiture of incentive compensation provisions under New York’s employee choice doctrine. Therefore, in addition to where lawmakers may set a salary threshold, employers should monitor if any reintroduced bill addresses non-compete agreements in connection with the sale of a business, how bonuses, stock options, and incentive compensation will be considered, and whether any new legislation addresses forfeiture provisions and the employee choice doctrine.

Lawmakers stated they intend to reintroduce a bill this year with a salary threshold. Governor Hochul previously suggested that non-compete agreements should be enforceable for employees earning more than \$250,000 annually. Such a salary threshold is not uncommon. Illinois (\$75,000), Rhode Island (250% of the poverty wage), Washington (\$120,559), and Washington, D.C. (\$150,000) each void non-compete agreements for employees earning less than a certain amount. A salary threshold would allow employers to continue to restrict highly compensated employees, including executives, from moving to a competing employer or starting a competing venture.

While New York employers should continue to monitor this development closely and be prepared to act if new legislation is signed into law, employers also should continue monitoring the Federal Trade Commission (FTC) and National Labor Relations Board (NLRB) proposals to ban employee non-compete agreements. On January 5, 2023, the FTC proposed a nationwide ban on employee non-compete agreements, though it included an exception for sales of businesses. The FTC, to date, has not issued final regulations on the proposed ban. On May 30, 2023, the NLRB’s General Counsel issued a memorandum stating that employee non-compete agreements may violate Section 7 of the National Labor Relations Act. The NLRB has taken action against certain employers for alleged violations of the NLRA.

Given New York’s apparent interest in passing a ban on non-compete agreements, and given the pending initiatives from the FTC and NLRB to ban non-compete agreements nationwide, employers should be on the lookout for new laws in 2024 impacting non-compete agreements. Employers may wish to have existing and proposed non-compete agreements reviewed by experienced legal counsel.

ABOUT ROBINSON+COLE

Robinson+Cole is an AmLaw 200 law firm established over 178 years ago, with a deeply-rooted culture of collaboration, civility, and inclusion. The Mansfield Rule Certified Plus-firm has more than 250 lawyers in eleven offices throughout the Northeast, Mid-Atlantic, Florida, and California, serving regional, national, and international clients, from start-ups to Fortune 50 companies. For more information, please visit www.rc.com.



Mansfield Rule
Certified *Plus* 2022-2023
Powered by DIVERSITY.AB



Boston | Hartford | New York | Washington, DC | Providence | Miami
Stamford | Wilmington | Philadelphia | Los Angeles | Albany | rc.com



© 2024 Robinson & Cole LLP. All rights reserved. No part of this document may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission. This document should not be considered legal advice and does not create an attorney-client relationship between Robinson+Cole and you. Consult your attorney before acting on anything contained herein. The views expressed herein are those of the authors and not necessarily those of Robinson+Cole or any other individual attorney of Robinson+Cole. The contents of this communication may contain ATTORNEY ADVERTISING under the laws of various states. Prior results do not guarantee a similar outcome.