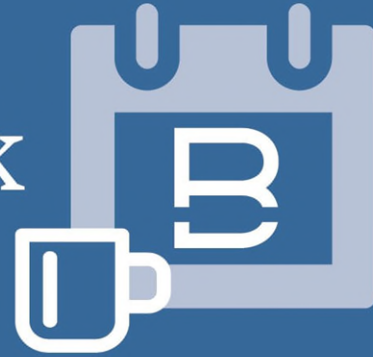


The Work Week

Bassford Remele Employment Practice Group



June 26, 2023

Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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Changes to Existing Laws Going Into Effect July 1, 2023

[Bryce D. Riddle](#)

[As we covered last month in *The Work Week*](#), this year's Minnesota legislative session passed several new employment laws affecting the rights of employers and employees alike. Two such laws—the Nursing Mothers and Lactating Employee Protection Act and Prohibition on Non-Compete Agreements—go into effect on July 1, 2023. Below is reminder of both laws and the changes that need to be implemented by employers later this week.

The Nursing Mothers and Lactating Employee Protection Act

The Nursing Mothers and Lactating Employee Protection Act was amended to expand protections for nursing mothers and lactating employees. Previously, the Act limited nursing mothers' or lactating employees' right to take breaks to express milk to the twelve-month period after the birth of the child. This twelve-month limitation has been removed and allows employees to continue taking breaks to express milk after a child turns one year old.

Additional amendments also removed language exempting employers from granting breaks if doing so would "unduly disrupt operations," which effectively bars employers from denying breaks to allow employees to express milk on the ground that doing so would impose an operational hardship. The amendment also expanded the definition of an "employer" as an employer employing one or more employees in Minnesota, rather than the fifteen-employee threshold in prior versions of the Act.

Significantly, the new amendment also requires employers to provide notice of the rights under this statute at the time of hire and when an employee makes an inquiry about or requests parental leave. This means that Minnesota employers need to have notices drafted this week, ready to distribute to new hires and any employee discussing parental leave beginning on July 1.

Ban on Non-Compete Agreements

Also beginning on July 1, Minnesota will no longer acknowledge non-compete agreements as valid. The law defines a “Covenant not to Compete” as any agreement that restricts an individual’s ability to: (1) work for another employer for a certain length of time; (2) work in a specific geographical area; or (3) work in a capacity that is similar to the individual’s previous employment duties. Importantly, the ban applies to both employees and independent contractors. The only scenario in which a newly created non-compete agreement would be enforceable is if it relates to the sale or a dissolution of a business, as long as all parties agree to the provision.

Notably, this new law does not void covenants not to compete that were entered into prior to July 1, 2023. Nor does the new law prohibit the use of other restrictive covenants, such as non-solicitation agreements and confidentiality agreements. Nevertheless, employers need to modify their existing employment and independent-contractor agreements this week to remove any non-compete provision.

Minnesota’s ban on non-competes makes it the fourteenth state (including Washington, D.C.) to do so. However, non-competes are now under federal scrutiny as the Federal Trade Commission has proposed a rule that would, with limited exceptions, bar employers from using employee non-compete agreements nationwide. Significantly, while Minnesota’s prohibition does not require rescission of prior non-compete agreements, the FTC’s proposed rule does and would invalidate the vast majority of existing non-competes.

Earlier this year, the FTC held a public forum on the proposed rule and extended the public comment period. To date, the FTC received nearly 27,000 public comments in support of and in opposition to the proposed rule. Proponents of a federal ban on non-competes note that the proposed rule would benefit approximately 30 million American workers and give them increased freedom to change jobs, create new businesses, and could increase wages by approximately \$300 billion each year. In contrast, opponents to the proposed ban argue that it would threaten employers’ ability to protect confidential information, protect other legitimate business interests, and otherwise hinder business operations. The FTC is not expected to vote on the proposed ban, or some version of it, until April 2024, and we will continue to monitor this important development going forward.

At Bassford Remele, we regularly provide advice and counsel to employers in drafting legal notices and employment agreements, including the changes that will take effect this week. Please let us know if we can be of assistance!

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