

## Colorado based employers now subject to penalties for unfair use of noncompete agreements



Timothy J. Lowe, Julia Ross | Monday, July 18, 2022

Laws regarding restrictive covenants continue to change quickly across the country. This time, in Colorado, a new law going into effect on August 10, 2022 will ban employers from entering into:

- (1) non-competition restrictions with workers or prospective workers who make less than \$101,250 per year (in 2022); and
- (2) non-solicitation restrictions with workers or prospective workers that make less than \$60,750 per year (in 2022).

The new law, HB 22-1317, limits the restrictive covenants that employers can enter into with their workers and prospective workers after August 10, 2022.

### What Limits does HB 22-1317 Place on Employment-Related Non-Competition and Non-Solicitation Provisions?

Colorado had previously placed restrictions on employers from entering into non-competition provisions with employees not at the executive or corporate level unless the employer is protecting trade secrets. HB 22-1317 further restricts employers by including a “highly compensated” standard. Starting on August 10, 2022, employers are prohibited from entering into non-competition agreements with workers or prospective workers who do not earn at least \$101,250 in 2022, and that amount is subject to increase each

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year.

Employers will also be restricted from entering into non-competition provisions with workers that require the worker to resolve disputes related to the covenant outside of Colorado, if at the time of termination, the worker primarily resided and worked in Colorado. This removes a critical tool used by employers with multi-state workforces who often pick a single state for the resolution of disputes for consistency and convenience.

HB 22-1317 also prohibits employers from entering into non-solicitation restrictions with workers who earn less than sixty percent of the highly compensated standard (which is \$60,750 in 2022).

Non-competition and non-solicitation restrictions entered into after August 10, 2022 must still be limited to those which are reasonably necessary to protect the employer's legitimate trade secrets.

### What Notice Requirements Does HB 22-1317 Place Upon Employers Entering Into Restrictive Covenant Provisions with Workers or Prospective Workers?

HB 22-1317 requires employers to provide workers and prospective workers with notice regarding restrictive covenants. Employers must provide notice of restrictive covenants to a prospective worker before the worker accepts an offer of employment, and to a current worker at least fourteen days before the earlier of: (1) the effective date of the restrictive covenant, or (2) the effective date of any additional compensation or change in the terms or conditions of employment that provide consideration for the restrictive covenant. These notices must be provided separately from other agreements or covenants and must be written in plain English. Notably, the notice must be signed by the worker or the prospective worker.

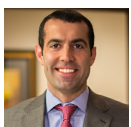
While these notice requirements may seem daunting, HB 22-1317 clarifies that an employer satisfies these notice requirements if the notice: "(i) is provided with a copy of the agreement containing the covenant not to compete; (ii) identifies the agreement by name and states that the agreement contains a covenant not to compete that could restrict the workers' options for subsequent employment following their separation from the employer; and (iii) directs the worker to the specific sections or paragraphs of the agreement that contain the covenant not to compete."

### What Penalties Does HB 22-1317 Impose Upon Employers?

Employers who violate the restrictions and requirements of HB 22-1317 are subject to a penalty of \$5,000 for each worker or prospective worker as well as injunctive relief and actual damages.

### What Does HB 22-1317 Mean for Employers with Employees in Colorado?

HB 22-1317 is yet another reminder that employers need to remain diligent regarding the changing landscape for restrictive covenants they enter into with workers or prospective workers. If you have employees in Colorado, one of the experienced attorneys on the McDonald Hopkins Trade Secret, Non-Compete, and Unfair Competition Team can help you confirm whether your restrictive covenants comply with HB 22-1317. Please reach out to your McDonald Hopkins attorney for support in reviewing your agreements



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**Julia Ross**