

Washington Attorney General Highlights the Risk - and Expense - of Not Complying With State Noncompete Laws



Timothy J. Lowe, Julia Ross | Tuesday, July 19, 2022

Not only are state legislatures targeting noncompete agreements by enacting new laws seemingly weekly, state attorney generals continue to investigate the unfair use of restrictive covenants. Most recently, after an investigation by the Washington Attorney General, Ohio-based Tradesmen International LLC may no longer enforce its noncompetition agreements against approximately 1,200 employees and must pay restitution of \$287,100.

As of January 1, 2020, employers in Washington were barred from entering into noncompetition agreements with workers making less than \$107,301.04 annually. Tradesmen provides staffing services throughout the U.S. and has seven offices in Washington. Since January 1, 2020, Tradesmen has placed roughly 1,200 workers at nearly 300 businesses around Washington. In doing so, Tradesmen required employees, who made less than \$107,301.04, to enter into noncompetition agreements that prohibited the workers from seeking and obtaining permanent positions with the employers following their temporary placements.

The Washington Attorney General's Office learned of Tradesmen's illegal agreements when an employer sought to hire a worker who Tradesmen place with his company. Upon learning that the employer sought to hire the worker, Tradesmen threatened the employer with legal action related to the employee's noncompetition agreement. The employer, in turn, filed a complaint with the Washington Attorney

Washington Attorney General Highlights the Risk - and Expense - of Not Complying With State Noncompete Laws

General's Office. Following the Washington Attorney General Office's investigation into the matter, Tradesmen agreed to a consent decree over the use of these illegal noncompete agreements.

The terms of the July 14, 2022 consent decree require Tradesmen to inform workers it has employed in Washington since January 1, 2020 that their noncompetition agreements are not enforceable and are no longer valid. Tradesmen will also pay \$287,100 in restitution.

Companies with employees in Washington should ensure compliance with Washington's new(ish) restrictive covenant laws to avoid similar investigations. These types of investigations are not limited to Washington; the attorney's general in Illinois and New York have conducted similar investigations in the past. It is critical that employers know the laws regarding noncompete agreements in any state where they have employees subject to those agreements. The potential risk of an illegal noncompete is no longer just the inability to enforce it; now the possibility of civil or criminal penalties is real.

The McDonald Hopkins Trade Secret, Non-Compete, and Unfair Competition Team has reviewed, revised, and litigated noncompete agreements across the country and is well versed in the most recent states laws. Please reach out to your McDonald Hopkins attorney for support in reviewing your agreements.



Timothy J. Lowe



Julia Ross