



## Governor Baker Signs New Noncompetition Act into Law

On August 10, 2018, Governor Charlie Baker signed into law the Massachusetts Noncompetition Agreement Act (the "Noncompetition Act") that will restrict the use of noncompetition agreements by for-profit business entities. The new legislation takes effect on October 1, 2018, and applies to noncompetition agreements entered into on or after that date.

The Noncompetition Act applies to agreements between an employer and employee under which the employee agrees not to engage in competition with his or her employer after his or her termination, but would not restrict employers' ability to impose restrictions on employees' activities while they remain employed. Further, the new law would not apply to certain types of restrictive agreements or covenants, including:

- (1) agreements entered into in connection with a sale of the business or all or substantially all of its assets;
- (2) agreements entered into in connection with termination of employment, if the terminated employee has seven days to rescind his or her acceptance; and
- (3) covenants not to solicit customers, vendors or suppliers of the business or hire or solicit employees.

### The Noncompetition Act Regulates Terms and Conditions

The Noncompetition Act limits restrictions on competition to one year following termination, except in certain very limited circumstances. The employer must have a legitimate business interest in protecting its trade secrets, good will or confidential information, and the restrictions must be reasonable both in geographic reach and the activities proscribed. Noncompetition agreements that restrict geographic areas or activities in which the employee has worked within two years prior to termination are presumptively reasonable.

The new law also requires that employers pay employees during the restricted period, either in the form of "garden leave" – 50% of the employee's highest annualized salary over the two years prior to termination – or other mutually agreed-upon consideration that may be a lesser amount than what the employee would receive as "garden leave". Noncompetition agreements need to be signed by both employer and employee and include a statement that the employee is entitled to consult counsel prior to signing.





In order for a noncompetition agreement to be effective, it needs to be provided to the employee either at the time the formal offer is made or at least ten days prior to the employee beginning work. A noncompetition agreement can only be effective after that if it is accompanied by fair and reasonable compensation independent of continuation of employment.

Under the new law, noncompetition agreements are not enforceable against certain types of employees, including employees who are terminated without cause or laid off, undergraduate or graduate students, employees age 18 or younger, or nonexempt employees under the Fair Labor Standards Act.

### Complying with the Noncompetition Act

Employers should start reviewing their noncompetition agreements and practices now to prepare for when the new law goes into effect on October 1, 2018. Employees should carefully review any non-compete agreements they sign before October 1. Please contact the authors or another member of your Hemenway & Barnes team with any questions you may have.

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