



BBG Client Advisory

Updates to Colorado Laws on Non-compete Agreements

New Law Further Restricts Employers from Imposing Non-Compete Agreements in Colorado

On August 10, 2022, House Bill 22-1317 goes into effect, amending C.R.S. § 8-2-113 to further limit the enforceability of non-competes and other restrictive covenants for employees either working or living in Colorado.

What does this mean for employers? While non-competes are still void in Colorado, the bill removes several previously permissible exceptions that would permit some non-compete agreements. Specifically, individuals, who, at the time of entering a non-compete agreement, are classified as “highly compensated workers” for purposes of protecting an employer’s trade secrets may be restricted by a non-compete so long as the agreement’s protection is “no broader than reasonably necessary to protect the employer’s legitimate interest in protecting the trade secret.”¹ To be classified as a “highly compensated worker,” an employee must currently earn an annual compensation of no less than \$101,250.00.² In addition, the new law also allows non-compete agreements related to the non-solicitation of customers, provided that the employee “earns an amount of annualized cash compensation equivalent to, or greater than, sixty percent of the threshold amount for highly compensated workers” (\$60,750.00) and “the non-solicitation covenant is no broader than reasonably necessary to protect the employer’s legitimate interest in protecting trade secrets.” In other words, employment restrictions for the protection of trade secrets are generally what is still allowed. All other employment restrictions are void.

Further, the new law clarifies that the following categories of agreements are not prohibited:

- **Recovery of Training Expenses.** Provisions that provide for an employer’s recovery of the expense of educating and training a worker if distinct from “normal on-the job training.”
- **Confidentiality Agreements.** Reasonable confidentiality provisions relating to an employer’s business; however, employers may not limit the disclosure of information arising from an employee’s general “training, knowledge, skill or experience whether

¹ The Colorado Uniform Trade Secrets Act defines a “trade secret” as “the whole or any portion or phase of any scientific or technical information, design, process, procedure, formula, improvement, confidential business, or financial information, listing of names, addresses, or telephone numbers, or other information relating to any business or profession which is secret and of value. To be a “trade secret” the owner thereof must have taken measures to prevent the secret from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.” CO Rev Stat § 7-74-102 (2016).

² This figure is set by the Colorado Department of Labor on an annualized basis.

gained on the job or otherwise, information that is readily ascertainable to the public, or information that a worker otherwise has a right to disclose as legally protected.”

- **Sale of a Business.** Covenants for the purchase and sale of a business or the assets of a business.
- **Apprenticeship Scholarship.** Provisions requiring repayment of a scholarship provided to an individual working in an apprenticeship if the individual fails to comply with conditions of the scholarship agreement.
- **Physicians.** Non-compete provisions allowing payment of damages for any injury suffered because of termination.

The new law also requires that written notice be provided to prospective employees prior to acceptance of an offer of employment as well as to current employees at least fourteen (14) days prior to the covenant becoming effective or any effective change in the employee’s condition of employment (i.e., a promotion or transition into a new role). The employer must provide the notice to the employee along with a copy of the agreement containing the covenant not to compete, identify the non-compete agreement by name, state that the agreement contains a covenant not to compete and direct the employee to the specific section or paragraph of the agreement containing the non-compete covenant. The employee must then sign the notice.

The new law carries over language already found in existing C.R.S. § 8-2-113(1) in that any use of force, threat, or intimidation to prevent an individual from engaging “in any lawful occupation at any place the person sees fit” is unlawful but it makes any such violation of this sub-section a Class 2 Misdemeanor. Furthermore, employers that violate *any provision* within the new law are subject to a \$5,000 penalty per employee or prospective employee, along with potential actual damages, attorney’s fees, and reasonable costs for private actions. Any adjudication as to the enforceability of the covenant will be in Colorado.

Employers should also be aware that the new law is not retroactive, meaning that existing non-compete agreements executed before August 10 will not be impacted by the amendment. However, moving forward, employers should consult with legal counsel to determine whether modifications should be made to their current non-compete agreements to ensure compliance following August 10.

For questions regarding this recent development, or any other questions regarding Colorado construction law, please contact the construction law attorneys at Beltzer Bangert & Gunnell LLP.