

# CLIENT ALERTS

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## Non-Compete Reforms Continue: Maine, New Hampshire, and Rhode Island Pass New Laws

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As reported by our team in recent alerts, there is an emerging trend of states adopting and/or considering legislation to ban or otherwise restrict the use of non-competes against “low wage” employees. Maine, New Hampshire, and Rhode Island are the latest states to jump on the bandwagon and reform their non-compete laws. As summarized below, these laws provide major changes affecting employers and employees.

### **Maine**

Set to take effect on September 18, 2019, Maine recently passed LD 733: “An Act To Promote Keeping Workers in Maine.” Key points of the new law are as follows:

- Prohibits employers from entering into non-compete agreements with employees earning wages at or below 400% of the federal poverty level;
- Even with regard to employees above this threshold, the law states that non-competes agreements are contrary to public policy and are enforceable only to the extent that they are reasonable and are no broader than necessary to protect one or more of the following legitimate business interests of the employer: 1) trade secrets, 2) confidential information, or 3) goodwill;
- Requires advanced disclosure of the use of non-compete agreements;
- Non-competes cannot take effect until after one year after the employee is hired or six months after the employee signs the agreement, whichever is later;
- Prohibits employers from entering into no-poach or non-solicitation agreements with other employers (including through a franchise agreement); and

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- Employers who violate the law are subject to a fine of not less than \$5,000.

### **New Hampshire**

New Hampshire previously enacted legislation requiring employers to provide a copy of a required non-compete agreement to the potential employee prior to the employee's acceptance of an offer of employment. Effective September 8, 2019, employers in New Hampshire will no longer be able to enter into a non-compete agreement with a "low-wage employee" which is defined as "an employee who earns an hourly rate less than or equal to 200 percent of the federal minimum wage." The new law also defines a "non-compete agreement" as "an agreement between an employer and a low-wage employee that restricts such low-wage employee from performing: (1) work for another employer for a specified period of time; (2) work in a specified geographical area; or (3) work for another employer that is similar to such low-wage employee's work for the employer who is a party to the agreement."

### **Rhode Island**

Rhode Island's new non-compete law (H. 6019) passed the legislature on July 11, 2019. If signed by Governor Raimondo, the law would prohibit noncompetition agreements for the following types of employees:

- Low-wage employees, defined as employees earning at or below 250% of the federal poverty level;
- Undergraduate/graduate students;
- Employees eighteen years of age or younger; and
- Non-exempt employees under the federal Fair Labor Standards Act. Generally speaking, these are non-salaried employees entitled to overtime pay.

The law defines a "noncompetition agreement" as "an agreement between an employer and an employee, or otherwise arising out of an existing or anticipated employment relationship, under which the employee or expected employee agrees that he or she will not engage in certain specified activities competitive with his or her employer, after the employment relationship has ended." The law specifically states that noncompetition agreements do not include:

- Covenants not to solicit or hire employees of the employer;
- Covenants not to solicit or transact business with customers, clients, or vendors of the employer;
- Noncompetition agreements made in connection with the sale of a business;
- Noncompetition agreements originating outside of an employment relationship (i.e. independent contractors);
- Forfeiture agreements (i.e. financial penalty for termination of employment not specifically tied to competitive activities);
- Nondisclosure or confidentiality agreements;

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- Invention assignment agreements;
- Noncompetition agreements made in relation to cessation of employment (provided the employee has seven business days to rescind acceptance); and
- Agreements not to apply for re-employment after termination.

The law would take effect six months after it is signed by the Governor.

### **Make sure your non-compete agreements are compliant**

In light of the above reforms, and the likelihood that this trend will continue, employers and franchisors should immediately review their existing non-compete and/or no-poach agreements. Any such agreements, if allowed, should be reasonable and tailored for the jurisdiction in which they are used. These agreements should also be reviewed periodically to ensure they are compliant in the face of constantly evolving and/or changing laws. Failure to do so runs the risk that such agreements would be null and void and may subject the company to substantial fines, where applicable, for any violations. Proactively taking steps to ensure compliance can minimize or eliminate these risks.

Please contact the author of this alert or any of Butzel Long's Trade Secret and Non-Compete Specialty Team attorneys regarding the latest changes in the non-compete laws and/or to help implement the recommendations above.