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Proposed New York Non-Compete Agreement Ban Rejected by Governor

Client Alert

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We previously reported that the New York legislature recently passed a restrictive bill effectively prohibiting all non-compete agreements. That bill (S3100A) defines a non-compete agreement as “any agreement or clause contained in any agreement, between an employer and a covered individual that prohibits or restricts such individual from obtaining employment, after the conclusion of employment with the employer included as a party to the agreement.” The New York legislature’s justification for passing the bill is that non-competes “have a negative effect on the labor market and economy of New York,” and “in certain industries, they can have a detrimental impact on consumers.” New York’s Governor, Kathy Hochul, had until the end of the year to sign or reject the bill. On November 30, 2023, Governor Hochul rejected the bill as currently written.

Prior to rejecting the bill, Governor Hochul received pressure from both proponents and opponents of the bill. Sponsors of the bill claimed that a total ban on non-competes would provide employees freedom to move jobs, which would, in turn, improve the economy. Opponents argued that a total ban would drive businesses from the state and have a negative impact on the economy. The Federal Trade Commission (the “FTC”) even weighed in prior to Governor Hochul’s decision. On November 28, 2023, the FTC Deputy Director of the FTC Office of Policy Planning, Sarah Mackey-Barr, penned a letter to Governor Hochul explaining the potential benefits that a ban on non-competes could yield, including an increase in workers’ earnings. The FTC further explained its proposed rule banning non-compete clauses in employment at all wage levels.

In the end, Governor Hochul rejected the bill, in part, because of her concerns that the bill did not strike the right balance between protecting low and middle-income workers, giving

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them flexibility for job mobility, while allowing employers to negotiate non-competes with higher income workers and owners selling their business. Governor Hochul has suggested that a revised bill should include a sale-of-business exception and a \$250,000 minimum salary threshold. Such carveouts would be similar to non-compete laws in other states, including Colorado, Illinois, Maine, and Washington.

Although Governor Hochul will not sign the bill as written, she may reach a compromise with the New York legislature. Given the potential areas of compromise, it seems likely that New York will soon have a ban on non-competes with sale-of-business and salary threshold carve-out.

The Butzel Trade Secret and Non-Compete attorneys will continue to monitor the developments of the New York non-compete bill and any future compromise legislation. If you have any questions about how the New York non-compete bill and any future compromise legislation may impact your current or future non-compete agreement, please contact the Trade Secret and Non-Compete Butzel attorneys.

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