

## *Labor and Employment Alert: Utah Law Now Restricts Non-Compete Agreements*

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In March 2016, Utah enacted the “Post-Employment Restrictions Act” (House Bill 251) to regulate non-compete agreements. Beginning May 10, 2016, an employer and an employee may not agree to a post-employment restrictive covenant for more than one year from the day on which the employee is no longer employed by the employer. A restriction longer than one year is void. A “post-employment restrictive covenant” means an agreement between an employer and employee under which the employee agrees that he will not compete with his employer in providing products, processes or services that are similar to those the employer provides.

The law expressly excludes the following types of agreements from the one-year temporal restriction: (1) non-solicitation agreements; (2) nondisclosure agreements; (3) confidentiality agreements; (4) a “reasonable severance agreement mutually and freely agreed upon in good faith at or after the time of termination”; and (5) agreements related to the sale of a business. Each of these may include a temporal restriction that is longer than one year.

Under the new law, an employer is liable for the employee’s attorney fees, court costs or arbitration costs, and actual damages if it seeks to enforce a post-employment restrictive covenant that is later found to be unenforceable.

Statutory and common law rules on non-compete agreements and other restrictive covenants vary from state to state. Employers may be organized in one state, headquartered in another state, and have employees in (or be recruiting employees from) still other states. In these situations, employers need to be aware of whether and how a particular state will enforce restrictive covenants. Contact your Vorys lawyer if you have questions about restrictive covenants and your employees.