

## **Alert** | Labor & Employment



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### **New Jersey and New York Lawmakers Propose New Limits on Restrictive Covenants**

For years, New York and New Jersey legislators have proposed various measures that would prohibit or restrict employers from using non-compete agreements that may restrict employees' future employment opportunities. This GT Alert discusses two bills, New York Senate Bill S4641 and New Jersey Senate Bill S1688, which propose changes to the landscape of restrictive covenants in these states.

#### **New York Senate Bill S4641**

On Feb. 10, 2025, the New York Senate introduced S4641 in response to Gov. Hochul's veto of a prior non-compete bill (S3100A) in December 2023. Bill S4641 would add Section 191-d to the New York Labor Law, prohibiting employers from requiring any "covered individual" to enter into a non-compete agreement. The bill defines a "covered individual" as any person other than a "highly compensated individual" who, with or without an employment agreement, performs work or services for another person, "in a position of economic dependence on, and under an obligation to perform duties for, that other person." "Highly compensated individuals" are those who are paid an average of at least \$500,000 per year.

The bill would also prohibit use of post-employment non-compete agreements with regard to "health care professionals, regardless of the individual's compensation level. Most health care providers who are licensed under New York law may fall under S4641's definition of "health related professionals." The law would permit employers to enter into agreements, even with covered individuals or a health care

professional, which (1) establish a fixed term of service and/or exclusivity during employment; (2) prohibit disclosure of trade secrets; (3) prohibit disclosure of confidential and proprietary client information; or (4) prohibit solicitation of the employer's clients.

The bill would also permit non-compete provisions as part of agreements to sell the goodwill of a business or to dispose of a majority ownership interest in a business, by a partner of a partnership, member of a limited liability company, or an individual or entity owning 15% or more interest in the business. Such non-compete agreements would still need to meet the common law test as to reasonableness in time and geographic scope, a necessity for protection of legitimate business interests, and lack of harm to the public.

S4641 would create a private right of action, allowing covered individuals who are subject to a prohibited non-compete agreement to file claims in court. If the employer is found to have violated the new Section 191-d, a court may void the non-compete agreement, prohibit the employer from similar conduct going forward, and order payment of liquidated damages, lost compensation, compensatory damages and/or reasonable attorneys' fees and costs to the employee. The bill caps liquidated damages at \$10,000 per impacted individual but permits a court to award liquidated damages to every claimant.

### **New Jersey Senate Bill S1688**

In New Jersey, the Senate Labor Committee is considering S1688, which was initially introduced in January 2024. This bill, if passed, would amend the New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10:5-12:7, and 10:5-12:8 to clarify that the prohibition of certain waivers in employment agreements includes non-disclosure and non-disparagement provisions that would limit an employee's right to raise claims of discrimination, retaliation, or harassment. The bill would also amend N.J.S.A. 10:5-12:7(c) to remove the original carve out for collective bargaining agreements, meaning the prohibition of waivers relating to discrimination, retaliation, or harassment claims would apply in the collective bargaining context as well as individual employment agreements.

### **Conclusion**

These proposed bills demonstrate states' continued efforts to limit employers' use of restrictive covenants. Prior efforts to formalize such restrictions have been mostly unsuccessful, but the New Jersey and New York legislatures still seek to narrow the scope of the restrictions.

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