

**THE LAST 60 DAYS OF ACTION IN EMPLOYMENT LAW**  
*Part I of VI – Non-Competition Laws*

February 3, 2020

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### **California**

On January 21, 2020, a California appellate court held that an employee's promise not to compete with an employer while employed does not violate California Business & Professions Code § 16600. See Techno Lite, Inc. v. EMCOD, LLC, No. B284989 c/w B289486, 2020 Cal. App. LEXIS 41 (Ct. App. Jan. 21, 2020).

### **Oregon**

Effective January 1, 2020, Oregon amended its statute governing non-compete agreements to provide that, within 30 days after termination, an employer must provide a signed, written copy of the terms of the non-compete agreement to the employee. See Or. Rev. Stat. § 653.295.

### **Rhode Island**

Effective January 15, 2020, Rhode Island enacted a statute governing non-compete agreements, which, among other things, provides that non-compete agreements are unenforceable against low-wage workers and workers classified as exempt under the federal Fair Labor Standards Act. See 2019 R.I. HB 6019.

### **Washington**

Effective January 1, 2020, Washington State enacted comprehensive non-compete reform. The key provisions of the new law include:

- a prohibition on non-competition agreements against employees who earn less than \$100,000 per year and against independent contractors who earn less than \$250,000 per year.
- a requirement that employers disclose the terms of a non-competition agreement in writing to prospective employees no later than the time the employee accepts an offer of employment. If such agreements are presented after the start of employment, employers must support them with additional consideration (continued at-will employment is not sufficient).
- a presumption that non-competition agreements with restrictions beyond 18 months after the termination of employment are unreasonable and unenforceable.
- a requirement that an employer pay an employee's base salary (minus compensation from a subsequent job) for the enforcement period if the employer wishes to enforce a non-

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- competition agreement against an employee who was laid off.
- a prohibition on choice of venue provisions in non-competition agreements that require disputes to be adjudicated outside of Washington State if the employee or independent contractor is “Washington-based.”
  - a prohibition on attempts to avoid Washington law with choice of law provisions.
  - a requirement to pay the employee actual damages or a statutory penalty of \$5,000, whichever is greater, plus reasonable attorney’s fees, expenses, and costs incurred, if a court or arbitrator determines that a noncompetition agreement violates the new law, or “reforms, rewrites, modifies, or only partially enforces” a noncompetition agreement.
  - a prohibition on employers restricting employees who earn less than twice the applicable state minimum hourly wage from having another job or otherwise supplementing their income, and a prohibition on franchisors’ restrictions on franchisees’ solicitation or hire of employees of the franchisor or of other franchisees.
  - the potential for retroactive application, as the law applies to all proceedings commenced on or after January 1, 2020, regardless of when the cause of action arose.  
See 2019 Wa. HB 1450.

*To discuss any of these changes, contact Patricia Tsipras at 610.408.2029 or [ptsipras@rubinformunato.com](mailto:ptsipras@rubinformunato.com)*

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