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New law makes some noncompetes illegal

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A new year means, as always, a new set of laws applicable to Illinois businesses. Among this year's new laws and regulations employers must navigate is a new restriction affecting employers' noncompetition agreements with certain low-earning employees.

Illinois law now prohibits employers from entering into noncompetes with employees who earn $13 an hour or less.

Illinois Freedom to Work Act

Under the Illinois Freedom to Work Act (Public Act 099-0860, effective Jan. 1), an Illinois employer (excluding governmental or quasi-governmental bodies) may not enter into a "covenant not to compete" with any of its "low-wage employees."

The term "covenant not to compete" is defined broadly to extend to any agreement restricting a covered employee from the following:

- Working for another employer for a specified period of time.
- Working in a specified geographic area.
- Performing other "similar" work for another employer.

Thus, the act is targeted to any type of noncompetition agreement — whether it has a temporal, geographic or other competitive restrictions.

Critically, however, the act is expressly limited to "low-wage" employees. A low-wage employee means someone who earns the greater of minimum wage (under federal, state or local law) or $13 an hour.

At this time, unless and until there are further increases in applicable minimum wage thresholds (beyond the current federal $7.25 an hour, state $8.25 an hour and Chicago $10.50 an hour), employees covered by the act then are those earning $13 per hour or less.

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The act is limited to agreements entered into after its effective date at the start of this year. Thus, an employer's existing agreements with its employees that predate Jan. 1 are not affected by this new law.

Following a trend

The act is consistent with broader governmental efforts in 2016, including by the Illinois attorney general, to curb employers from locking lower-level employees into noncompetes.

However, employers may still retain certain other restrictions. For example, absent from the explicit purview of the act are non-solicitation provisions — which may restrict an employee's recruitment of the employer's other employees or its customers or clients — or other limitations, such as those that restrict the disclosure or dissemination of a company's confidential information.

With the act only recently codified in the books, it is of course unclear how it will affect Illinois employers going forward.

Typically, employers require more senior executives, salespeople or those in other similar, higher-paying positions to execute noncompetition agreements as a condition of employment — as opposed to the low-wage workers protected by the act.

However, it is not uncommon for an employer to include noncompetes among an oasis of new-hire materials applicable to all of its employees. The act would curtail such a practice.

Takeaway for employers

Illinois employers would be well-advised to review their new hire and on-boarding processes to ensure that they are compliant with the act.

Moreover, it is important to remember that apart from the act, Illinois courts generally disfavor noncompetes as a restraint on trade — a restriction on an employee's mobility and his or her ability to earn a living.

Thus, the act aside, it is prudent for employers to periodically review their policies to ensure that their noncompete agreements, even those beyond the act's scope, nonetheless are reasonable in time period and geographic territory and are no broader than necessary to protect an employer's legitimate interests.