

VIRGINIA UPDATE: INCREASED EARNING THRESHOLD FOR “LOW-WAGE EMPLOYEES” WHO ARE EXCLUDED FROM NON-COMPETES

February 20, 2024

Since 2020, Virginia has prohibited employers from imposing non-competes on “low-wage” employees. The definition of a low-wage employee is subject to change based on the annual determination of the “average weekly wage of the Commonwealth.” [Va. Code § 40.1-28.7:8\(A\)](#). On January 16, 2024, the Virginia Department of Labor and Industry (“DOLI”) [announced](#) the average weekly wage would increase to \$1,410 per week in 2024. Thus, this year a low-wage employee is an individual who makes less than \$1,410 per week (or \$73,320 annually).

VIRGINIA’S PROHIBITION ON NON-COMPETES

In 2020, the Virginia legislature passed a law prohibiting non-competes with respect to low-wage employees. Under the terms of this state law, an employer cannot enter into, enforce, or threaten to enforce a covenant not to compete with any low-wage employee. [Va. Code § 40.1-28.7:8\(B\)](#). Virginia employers are not only prevented from entering into new covenants not to compete with low-wage workers, but also from enforcing or threatening to enforce covenants not to compete that were entered into before this law went into effect.

Virginia defines a “covenant not to compete” as:

a covenant or agreement, including a provision of a contract of employment, between an employer and employee that restrains, prohibits, or otherwise restricts an individual's ability, following the termination of the individual's employment, to compete with his former employer. A “covenant not to compete” shall not restrict an employee from providing a service to a customer or client of the employer if the employee does not initiate contact with or solicit the customer or client.

[Va. Code § 40.1-28.7:8\(A\)](#).

A “low-wage employee” is defined in terms of the “average weekly wage of the Commonwealth.” [Va. Code § 40.1-28.7:8\(A\)](#). The average weekly wage of the Commonwealth is computed annually by the DOLI. In 2023, a “low-wage employee” was an individual who made \$1,343 per week or \$69,836 annually. In 2024, this increased to \$1,410 per week. **Thus, in 2024, an employer cannot enter into (or enforce or threaten to enforce previously entered into) covenants not to compete with employees who make less than \$1,410 per week or \$73,320 annually.**

Notably, Virginia does not prevent employers from utilizing nondisclosure agreements that are “intended to prohibit the taking, misappropriating, threatening to misappropriate, or sharing of certain information, including trade secrets . . . and proprietary or confidential information.” [Va. Code § 40.1-28.7:8\(C\)](#). Employers should carefully evaluate the protection needed when developing and enforcing confidentiality, nondisclosure, and other agreements with employees.

CONCLUSION

Under this increased threshold for low-wage employees, employees who were not previously covered by Virginia’s prohibition on non-competes for low-wage employees may now be covered by the statute and released from any non-competition agreement. We recommend that employers review their agreements that include any form of restrictive covenant and ensure that no low-wage employees are subject to an improper restriction. While employers may not impose non-competes against low-wage employees, they may, where necessary, utilize non-disclosure agreements to protect trade secrets and propriety or confidential information.

If you have any questions or need further guidance regarding Virginia’s prohibition on non-competes for low-wage employees or restrictive covenants generally, please contact a member of Hancock Daniel’s [Labor & Employment](#) team.

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