

Virginia Update: New Law Expanding Prohibition on Non-Competes Takes Effect July 1, 2025

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Carefully drafted covenants not to compete are enforceable in Virginia provided the restraint (1) is no broader than necessary to protect a legitimate business interest of the employer, (2) is not unduly harsh and oppressive in curtailing the employee's legitimate efforts to earn a livelihood, and (3) is reasonable from a public policy standpoint. However, since July 1, 2020, an employer has not been permitted to "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). Under current Virginia law, a "low-wage" employee is one whose average weekly earnings are "less than the average weekly wage of the Commonwealth," which is set annually by the Virginia Department of Labor and Industry ("DOLI"). Va. Code § 40.1-28.7:8(A). Effective July 1, 2025, the definition of "low-wage" employee will expand to include any employee classified as "non-exempt" under the Fair Labor Standards Act (FLSA), regardless whether the employee meets the average weekly wage threshold set by DOLI. Although this statutory revision may seem narrow in scope, it poses significant potential consequences for employers throughout Virginia who choose to pay employees on an hourly, rather than salaried, basis and who rely upon non-compete agreements to protect their business interests. Below, we further explain the change and offer recommendations for consideration.

The Current Law

A "covenant not to compete" is 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." [Va. Code § 40.1-28.7:8\(A\)](#). As noted, currently an employer in Virginia cannot "enter into, enforce, or threaten to enforce a covenant not to compete" with a "low-wage employee." Va. Code § 40.1-28.7:8(B). Any employer who violates the above prohibition faces civil penalties, costs and attorneys' fees, and may be sued for up to two years after the latter of: (i) the date the covenant not to compete was signed, (ii) the date the low-wage employee learns of the covenant not to compete, (iii) the date the employment relationship is terminated, or (iv) the date the employer takes any step to enforce the covenant not to compete. Va. Code § 40.1-28.7:8(D)-(E). Assessing whether an employee is "low-wage"—and therefore covered under the statute—depends on the employee's average weekly earnings. Va. Code § 40.1-28.7:8(A). In 2025, the average weekly wage

threshold [set by DOLI](#) amounts to a \$76,081 annual salary. Through June 30, 2025, employers may require individuals who work in Virginia and who earn more than this amount to comply with an appropriately drafted non-compete.

The Change In Law

Starting July 1 this year, Virginia's prohibition on certain non-competes will not apply only to employees earning below the "average weekly wage" threshold of \$76,081. Instead, as of the effective date of the revised statute, employers also may not enter into or renew contracts or agreements that contain a covenant not to compete if the employee is a non-exempt worker who is entitled to overtime pay under the Fair Labor Standards Act for any hours worked in excess of forty (40) per week. This is because the General Assembly recently enacted [Senate Bill 1218](#), which will expand the definition of "low wage" employee to include any employee "who is entitled to overtime compensation" under the FLSA, "regardless of his average weekly earnings." See 2025 Va. Acts. Ch. 585 (amending Va. Code § 40.1-28.7:8). The FLSA generally requires employers to pay overtime to employees who work over 40 hours per workweek unless the employee is exempt. 29 U.S.C. § 207(a). To qualify for an exemption, an employee must satisfy both specific job duty and salary requirements, which vary depending on the type of exemption. Thus, starting July 1, 2025, an employer assessing whether an employee is protected under Virginia's non-compete statute must consider not only if the employee earns "less than the average weekly wage" threshold set by DOLI, but also if the employee is properly classified as "non-exempt" under the FLSA.

What This Means For Employers

Given the additional restrictions on non-competes governed by Virginia law, employers should take measures between now and July 1, 2025, to prepare for the change in law. We offer some recommendations below.

Confirm Employees Subject to Non-Competes are Exempt under the FLSA

Employers in Virginia should review existing non-compete agreements now and ensure their classification of covered employees is complete and accurate. Any amendments to existing agreements or new agreements with non-exempt Virginia employees should be entered into before July 1, 2025, when Virginia's "low-wage" non-compete statute will expand to cover new or amended agreements with employees who are non-exempt under the FLSA, regardless of their earnings. Employers who require or attempt to enforce a non-compete in violation of the expanded statute risk liability under Va. Code § 40.1-28.7:8. A thorough review of existing non-compete agreements and workforce classification is crucial to mitigating exposure and maximizing the enforceability of current or new agreements.

Consider Using More Targeted Alternatives

Senate Bill 1218 reflects a broader movement across the country increasingly restricting the use of non-compete agreements both for professionals and non-professionals. Federal and state governments—including Virginia—have sought to limit the use of non-compete agreements, as reflected by the [Federal Trade Commission's unsuccessful attempt](#) last year to ban non-compete agreements nationwide. Similarly, courts have become increasingly reluctant to enforce such agreements.

Employers may consider using thoughtfully tailored non-solicitation and non-disclosure agreements instead of non-compete covenants to achieve similar goals, where possible. Virginia's non-compete statute expressly does not limit the "creation or application of" certain non-disclosure agreements. Va. Code § 40.1-28.7:8 (C). Employers also may evaluate whether to transition potentially exempt professional employees to payment on a salaried basis, rather than hourly, to allow employers to keep agreements that include non-competes in place.

Conclusion

Between now and July 1, 2025, employers have time to prepare for Virginia's expanded restrictions on certain non-compete agreements. We recommend that employers review their agreements that include restrictive covenants to ensure they are enforceable as drafted, or amended if desired and necessary.

If you have any questions or need further guidance regarding Virginia's expanded 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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