

Colorado's New Restrictions on Non-Compete Agreements Include a Six-Figure Minimum Salary Requirement and Harsh Penalties for Employers

Insights

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Employers face new restrictions on the use of non-compete and non-solicit agreements with Colorado-based employees. In addition to facing criminal penalties and jail time, employers may now be hit with a \$5,000 penalty, injunctive relief, actual damages, and attorneys' fees for every Colorado-based employee harmed by a faulty agreement. The new restrictions apply only to agreements entered into with a Colorado-based employee after August 9, 2022. In light of these developments, and consistent with our previous guidance on Colorado law, employers who wish to enter into or enforce a non-compete or non-solicit agreement with a Colorado-based employee should first reach out to their Gunderson Dettmer attorney.

Amended Colorado Statute

Under **the newly amended Colorado law**, a non-compete or non-solicit "that restricts the right of any person to receive compensation for performance of labor for any employer is void," except for agreements where:

1. The employee's wages at the time of signing the agreement and at the time of enforcement exceed the minimum threshold of:
 - a. the highly compensated workers threshold (*i.e.*, \$101,250 in 2022) for non-compete agreements; and

b. 60% of the highly compensated workers threshold (*i.e.*, \$60,750 in 2022) for non-solicit agreements;

2. the non-compete and/or non-solicit provisions are intended to protect trade secrets;

3. the non-compete and/or non-solicit provisions are “no broader than reasonably necessary to protect the employer’s legitimate interest in protecting trade secrets”;

4. the employer provides separate written notice describing the non-compete and/or non-solicit provisions in straightforward/accessible language; and

5. for employees who primarily resided or worked in Colorado at the time of termination, Colorado law governs the enforceability of the agreement, and the employee may not be forced to bring their case outside of Colorado.

The Colorado law voiding non-competes and non-solicits does not apply to:

1. any contract for the purchase/sale of a business;
2. contractual provisions for recovering certain educational and training expenses; or
3. “reasonable confidentiality provision[s] relevant to the employer’s business” that do not prohibit disclosure of information that arises from the worker’s general training, knowledge, skill.

Under the amended law, Colorado no longer permits employers to use non-compete agreements for all executive and management personnel or employees who are professional staff to executive and management personnel.

Penalties

Employers who violate the amended law may be subject to actual damages, injunctive relief, reasonable costs, attorneys’ fees, and a penalty of \$5,000 per worker harmed. These penalties are in addition to the potential Colorado criminal penalties, which include up to 120 days in jail, a fine of up to \$750, or both, and were previously reported [here](#).

Contact Gunderson Dettmer Attorneys before Requiring or Enforcing a Non-Compete or Non-Solicit in Colorado

While post-job non-compete and non-solicit agreements may still be an option in Colorado in some circumstances, a fact-specific legal assessment is more important

than ever. Please contact your Gunderson Dettmer attorney if you would like to include a post-job non-compete or non-solicit in an employment agreement with a Colorado-based employee, or if you are considering taking action to enforce such an agreement in Colorado.

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