

Employers Who Violate Colorado's Non-Compete Laws Face Stiff New Penalties, Including Jail

Insights

February 28, 2022

Effective March 1, 2022, employers who violate Colorado's restrictions on post-job non-compete provisions may face criminal penalties, including up to 120 days in jail. In light of these new penalties, GD clients who wish to include these non-compete provisions in their Colorado employment agreements, or wish to enforce an existing version of these non-compete provisions in Colorado, should first reach out to their GD attorney.

The Colorado Statute and Enhanced Penalties

Under Colorado law, a non-compete provision that "restricts the right of any person to receive compensation for performance of skilled or unskilled labor for any employer shall be void," except for:

1. any contract for the purchase/sale of a business;
2. any contract for the protection of trade secrets;
3. any contractual provision for recovering educational and training expenses of an employee who leaves after less than two years of employment; and
4. contracts with executive and management personnel and employees who constitute professional staff to executive and management personnel.

Even when one of these exceptions applies, Colorado courts insist that the non-compete provisions be reasonable in duration and scope. Effective March 1, 2022, a violation is a crime punishable by up to 120 days in jail, or a fine of up to \$750, or both. C.R.S. § 8.2.113. It is unclear how or when Colorado courts or authorities will attempt to enforce this amendment. Unanswered questions include: (1) Will employers face these penalties if they include a non-compete in a post-March 1, 2022 employment agreement, only if they attempt to enforce a post-March 1, 2022 non-compete, or in both instances? (2) Will employers face these penalties if they attempt to enforce existing, pre-March 1, 2022 non-compete provisions?

GD's Contract Generator

GD's Contract Generator is a powerful tool available to our clients in all 50 states. Using our Contract Generator, clients can create (in a matter of minutes) their own standard offer letters and PIAs, as well as advisor agreements, mutual NDAs, and one-way NDAs, simply by logging on and answering a few questions. If you are not already familiar with this document automation tool, please reach out to your GD attorney to learn more.

GD's Precautionary Measures

In response to Colorado's enhanced penalties and the lack of clarity regarding enforcement, GD is instituting Colorado-specific safeguards in our Contract Generator tool. Contract Generator will no longer offer a post-job non-compete provision in PIAs prepared for newly-hired Colorado-based employees. Also, while the PIA included with our corporate formation materials contains a post-job non-compete provision, that provision has been modified and will not apply to Colorado-based employees in formation materials generated after March 1, 2022.

Contact GD Attorneys before Requiring or Enforcing a Non-Compete in Colorado

Post-job non-competes remain an option in Colorado but a fact-specific legal assessment is more important than ever. Please contact your GD attorney if you would like to include a post-job non-compete in an employment agreement with a Colorado-based employee, or if you are considering taking action to enforce an existing post-job non-compete in Colorado.

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