

Illinois Legislature Seeks to Limit Use of Restrictive Covenants

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Two bills were recently introduced in the Illinois legislature that seek to limit or preclude the use of restrictive covenants for Illinois employers.

First, on February 19, 2021, the Illinois House of Representatives introduced House Bill 3066 (accessible [here](#)), which seeks to eliminate the use of non-competition and non-solicitation restrictive covenants against Illinois employees unless certain salary thresholds and notice requirements are met. More specifically, if passed, the bill would amend the Illinois Freedom to Work Act (820 ILCS § 90) to:

- Prohibit the use of covenants not to compete unless the employee's actual or annualized earnings exceed \$75,000 per year;
- Prohibit the use of covenants not to solicit (both employee and client non-solicitation restrictions are included) unless the employee's actual or annualized earnings exceed \$45,000 per year;
- Render covenants not to compete and covenants not to solicit unenforceable unless employers: (i) advise employees to consult with counsel before agreeing to the restrictive covenant; and (ii) provide an employee with a copy of the covenant at least fourteen calendar days before the commencement of the employee's employment; and
- Prevent employers from enforcing covenants not to compete against any employee who is terminated or furloughed due to the COVID-19 pandemic, or under any circumstances that are similar to the COVID-19 pandemic, unless the employee receives compensation equivalent to his or her base salary during the enforcement period minus compensation earned elsewhere during the enforcement period.

The bill also has a fee-shifting provision. It would allow an employee to pursue reasonable attorneys' fees and costs if the employee prevails in a lawsuit brought by an employer to enforce a covenant not to compete or a covenant not to solicit.

Second, on February 22, 2021, the Illinois House of Representatives introduced House Bill 3449 (accessible [here](#)), which also seeks to amend the Illinois Freedom to Work Act. Significantly, this bill seeks to prohibit the use of covenants not to compete for all Illinois employees, regardless of an employee's salary, which are entered into after the date the bill were to become law.

We will continue to monitor developments relating to these proposed laws. In the meantime, Illinois employers would be well-advised to begin reviewing whether and how the proposed laws may impact their use of restrictive covenants going forward.

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- **Steven J. Pearlman**
Partner
- **Edward C. Young**
Senior Counsel