

Illinois Governor Signs Restrictive Covenant Bill Into Law

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On August 13, 2021, Illinois Governor J.B. Pritzker signed into law an amendment to the Illinois Freedom to Work Act (820 ILCS § 90), which imposes restrictions on the use of non-competition and non-solicitation (employee and customer) restrictive covenants for Illinois employees. The law takes effect on January 1, 2022, and only applies to restrictive covenants entered into after January 1, 2022.

Below are some of the key provisions of the law:

- The law prohibits employers from entering into non-competition agreements with employees who earn \$75,000 per year or less and also prohibits employers from entering into non-solicit agreements with employees who earn \$45,000 per year or less.
- For non-compete agreements, the salary threshold amounts will increase every five years by \$5,000 until January 1, 2037, when the amount will equal \$90,000. For non-solicit agreements, the salary threshold amounts will increase every five years by \$2,500 until January 1, 2037, when the amount will equal \$52,500.
- Employers will now be required to advise employees to consult with an attorney before entering into a non-compete or non-solicit agreement and must also provide employees at least 14 days to review the agreement and decide whether to sign. Employees have the option of signing the agreement before the 14-day period has ended.
- Employers are prohibited from entering into restrictive covenants with employees who have lost their jobs due to the COVID-19 pandemic or under circumstances that are similar to the COVID-19 pandemic unless enforcement of the covenant not to compete includes compensation equivalent to the employee's base salary at the time of termination for the period of enforcement minus compensation earned through subsequent employment during the period of enforcement.
- If an employee prevails on a claim filed by an employer seeking to enforce a covenant not to compete or a covenant not to solicit, the employee can recover all costs and reasonable attorney's fees from the employer regarding such claim. A court or arbitrator may also award appropriate relief.

Illinois employers should revisit their restrictive covenant agreements in light of these changes.

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