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Governor Hochul Vetoes New York Non-Compete Ban

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After months of speculation and intense lobbying, New York Governor Kathy Hochul vetoed a bill that would have imposed a near-total ban on employee non-competition agreements in New York State.

Governor Hochul has long expressed her support for legislation banning non-compete agreements for "low and middle-income" employees, but generally balked at the idea of a blanket prohibition covering even highly compensated professionals and executives. The bill that passed both houses of the New York State legislature earlier this year would have banned future non-compete agreements for all employees, regardless of earnings level.

The legislation was the subject of an aggressive lobbying campaign. While some labor unions, such as SAF-AFTRA, encouraged Governor Hochul to sign the legislation in its original form, many business groups and trade associations coalesced in opposition to the legislation. The Business Council of New York State and the New York City Bar Association, among others, publicly urged Governor Hochul to veto the bill in its entirety or require substantial chapter amendments as a condition of signing.

In an effort to strike a compromise, Governor Hochul previously proposed signing the bill subject to "chapter amendments" exempting employees earning $250,000 or more in total annual compensation. The bill's sponsor, State Senator Sean Ryan (D-Buffalo), fiercely opposed such a carve-out, indicating that he would introduce language retroactively invalidating existing non-compete agreements if the Governor demanded a wage-based exemption. Despite reports that New York State Senator leaders would have been willing to accept a chapter amendment permitting non-compete agreements for employees above a certain salary threshold, no agreement on such an amendment ever came to fruition.

In a statement explaining her veto, Governor Hochul lamented that she "attempted to work with the Legislature in good faith on a reasonable compromise," but was constrained to veto the proposed legislation with its "one-size-fits-all approach." The Governor's veto does not necessarily signal the end for non-compete legislation in New York. The Governor's veto memo notes that she remains committed to enacting non-compete legislation protecting "middle-class and low-wage earners." With Democrats firmly in control of the New York State legislature, the bill's sponsors have promised to reintroduce the non-compete legislation in 2024. Governor Hochul could also introduce her own proposal by attaching it to the state budget. Meanwhile, the Federal Trade Commission – which supported the now-vetoed New York bill – continues to evaluate whether to issue a final rule implementing its own nationwide ban on non-compete agreements.

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