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Virginia Strengthens Ban on Non-Competes for “Low-Wage Employees”

Law and the Workplace on **April 7, 2025**

On March 24, 2025, Virginia Governor Glenn Younkin signed into law S.B. 1218, which amended Virginia’s non-compete law to expand the definition of “low-wage employees” with whom employers may not enter into non-competition agreements.

A “low-wage employee” previously was defined as any employee whose average weekly earnings fell below the Virginia average weekly wage. For 2025, this equated to $1,463 per week, or $76,081 annually. The amendment expands the definition of “low-wage employee” to include any employee who, regardless of their average weekly earnings, is entitled to overtime compensation under the federal Fair Labor Standards Act (“FLSA”) (for hours worked over 40 hours in a given week). The amendment will take effect on July 1, 2025.

The other provisions of Virginia’s non-compete statute, Virginia Code § 40.1-28.7:8, were not modified, and contain several noteworthy features. The statute provides a private right of action for low-wage employees against any employer who attempts to enforce a non-compete in violation of the statute, and if they prevail, the statute authorizes a court to award liquidated damages, lost compensation, and attorneys’ fees. Employers may also be subject to a civil penalty of $10,000 for each violation of the statute. Also, employers must post a copy of the statute or a summary approved by the Virginia Department of Labor and Industry alongside other federal or state required notices, or risk civil penalties.

Employers with employees in Virginia should revisit their non-competition agreements for compliance in light of the recent amendment.

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Related Professionals

- **Steven J. Pearlman**
  Partner
- **Scott S. Tan**
  Associate