



Dora Lane

Partner

775.327.3045

Reno, Las Vegas

dlane@hollandhart.com

Nevada Non-Compete Agreements Under Attack in Legislature

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Non-compete provisions in employment contracts will be vastly limited if a new bill recently introduced in the Nevada Assembly is enacted into law. AB 149 would make a non-compete restriction void and unenforceable if it prohibits an employee "from pursuing a similar vocation in competition with or becoming employed by a competitor of his or her employer **for a period of more than 3 months after the termination of the employment of the employee.**" (emphasis added.)

Reasonableness Restricted To Three Months

Under current Nevada law, an employer may enter into an agreement with an employee that prohibits the employee from competing with the employer or becoming employed with a competitor for a specified period of time. (NRS 613.200). The Nevada Supreme Court has held that such restraints of trade must be reasonable to be enforceable. According to the Court, a non-compete agreement is reasonable if the restraint is not "greater than is required for the protection of the person for whose benefit the restraint is imposed" and does not impose an undue hardship on the person restricted by the non-compete. In determining whether a specific non-compete restriction is reasonable, Nevada courts look at the duration of the restriction, the territory in which the employee is restrained from employment, and the type of employment that the employee is restrained from pursuing.

The new bill would set a concrete limit on the reasonableness of post-employment competitive restrictions by limiting the duration to three months or less. Any non-compete seeking to restrict competitive activity by a former employee for more than three months would be against public policy, void, and unenforceable. The bill states that a longer restriction necessarily imposes a restraint greater than necessary for the protection of the employer and creates an undue burden for the employee.

Fines and Penalties For Longer Non-Competes

AB 149 would impose penalties on persons, associations, companies, corporations, agents, or officers who negotiate, execute, and enforce agreements that are not compliant with the bill's mandates. In other words, if an employer willfully enters into a non-compete agreement that restricts post-employment competition for longer than three months, it may be subject to fines and penalties. Parties who willfully prevent a former employee from obtaining employment elsewhere beyond the three-month

restriction would be guilty of a gross misdemeanor and subject to a fine of up to \$5,000. In addition, the Labor Commissioner could impose against each responsible party an administrative penalty of up to \$5,000 for each violation as well as investigative costs and attorney's fees incurred in any associated proceeding.

Stay Tuned

As proposed, the non-compete limitation would become effective July 1, 2017. The bill was referred to the Committee on Commerce and Labor after its introduction by Assemblyman Richard Carrillo. We will continue to follow this bill as it is considered by the Nevada legislature.

If you have any questions on this bill, please feel free to reach out to me at DLane@hollandhart.com or any Holland & Hart attorney with whom you regularly work.

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