STATE OF NEW YORK

7864--A

R. R. 174

2017-2018 Regular Sessions

IN ASSEMBLY

May 17, 2017

Introduced by M. of A. DINOWITZ, TITUS, STECK -- (at request of the Department of Law) -- read once and referred to the Committee on Labor -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Rules -- amended on the special order of third reading, ordered reprinted as amended, retaining its place on the special order of third reading

AN ACT to amend the labor law, in relation to prohibiting non-compete agreements and certain restrictive covenants

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The labor law is amended by adding a new section 191-d to read as follows:

§ 191-d. Non-compete agreements. 1. For the purposes of this section, the term:

a. "Non-compete agreement" means an agreement, or clause contained in an employment contract, between an employer and an employee that prohibits or restricts such employee from obtaining employment, after the conclusion of employment with the employer included as a party to the agreement:

(i) for a specified period of time;

(ii) in any specified geographical area; and/or

(iii) with any particular other employer or in any particular industry.

b. "Covered employee" means any employee whose earnings are less than seventy-five thousand dollars annually. This threshold shall be annually increased, where warranted by application of the below-described formula, pursuant to a percentage to be determined by reference to the consumer price index, published by the United States Bureau of Labor Statistics, for the applicable calendar year. Said percentage shall equal fifty percent of the annual inflation, as determined from the increase in the consumer price index in the one-year period ending on

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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March thirty-first prior to the cost-of-living adjustment effective on the ensuing September first. Said percentage shall then be rounded up to the next higher one-tenth of one percent and shall not exceed three percent. If the percentage increase would be less than one percent, the threshold shall not increase.

2. No employer or its agent, or the officer or agent of any corporation, partnership, or limited liability company, shall seek, require, demand or accept a non-compete agreement from a covered employee.

3. For all employees other than covered employees, no employer or his or her agent, or the officer or agent of any corporation, partnership, or limited liability company, shall seek, require, demand or accept a non-compete agreement from any employee unless the non-compete agreement meets the following requirements:

a. It shall be in writing and signed by the employer and employee.

b. It shall be provided to a prospective employee by the earlier of a formal offer of employment or thirty days before the non-compete agreement goes into effect.

c. If a current employee is not subject to a non-compete agreement, any new non-compete agreement must be provided at least thirty days before the agreement becomes effective.

4. If an employee subject to a non-compete agreement is discharged without cause, the non-compete agreement is no longer enforceable as to that employee.

5. a. An employee, including a covered employee, may bring a civil action in a court of competent jurisdiction against any employer or persons alleged to have violated this section. An employee shall bring such action within two years of the later of: (i) when the prohibited non-compete agreement was signed; (ii) when the employee learns of the prohibited non-compete agreement; (iii) when the employment relationship is terminated; or (iv) when the employer takes any step to enforce the non-compete agreement. The court shall have jurisdiction to void any such non-compete agreement and to order all appropriate relief, including enjoining the conduct of any person or employer; ordering payment of liquidated damages; and awarding lost compensation, damages, reasonable attorneys' fees and costs.

b. For the purposes of this subdivision, liquidated damages shall be calculated as an amount not more than ten thousand dollars. The court shall award liquidated damages to every employee affected under this section, in addition to any other remedies permitted by this section.

c. The court shall also award a consideration payment if the employer did not provide such payment when due.

6. The provisions of this section shall not apply to employees covered under section two hundred two-k of this chapter.

§ 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.