

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:

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

3 § 191-d. Non-compete agreements. 1. For the purposes of this section,
4 the term:

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

10 (i) for a specified period of time;

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

12 (iii) with any particular other employer or in any particular indus-
13 try.

14 b. "Covered employee" means any employee whose earnings are less than
15 seventy-five thousand dollars annually. This threshold shall be annually
16 increased, where warranted by application of the below-described formu-
17 la, pursuant to a percentage to be determined by reference to the
18 consumer price index, published by the United States Bureau of Labor
19 Statistics, for the applicable calendar year. Said percentage shall
20 equal fifty percent of the annual inflation, as determined from the
21 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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1 March thirty-first prior to the cost-of-living adjustment effective on
2 the ensuing September first. Said percentage shall then be rounded up to
3 the next higher one-tenth of one percent and shall not exceed three
4 percent. If the percentage increase would be less than one percent, the
5 threshold shall not increase.

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

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

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

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

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

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

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

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

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

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

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

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