

# Buchalter

## CLIENT ALERT

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### 2020 Check List: Update Noncompete Agreements to Comply with New Restrictions in Washington and Revisit IP and Arbitration Provisions in Employment and Independent Contractor Agreements

#### **Washington's New Noncompetition Law - RCW Chapter 49.62 (Noncompetition Covenants).**

Effective January 1, 2020, a Washington State law prohibits employers from enforcing noncompetition agreements against employees earning less than \$100,000 and independent contractors earning less than \$250,000 per year.

The new law prevents the enforcement of noncompetition agreements, unless the employer:

- (1) discloses the terms of the non-compete to the employer or independent contractor in writing no later than the time of the acceptance of the offer of employment, or
- (2) provides specific consideration, in addition to the terms of employment, for entering into the noncompetition agreement after the employee or independent contractor accepts the terms of employment.

The new law also creates a presumption that a noncompetition agreement lasting longer than 18 months is unenforceable, absent other circumstances.

#### **Checklist.**

Under the new Washington law, you should:

- ✓ Check your personnel files to confirm whether the employment offers contained post-employment restrictive covenants such as noncompetition agreements, which are subject to the new law.
- ✓ Check annual earnings to determine whether the employee or contractor is within the scope of the law.
- ✓ Check agreements for a duration longer than 18 months.
- ✓ Check your exit interview policies.

## **What is a Noncompetition Agreement?**

A noncompete requires one party, usually the employee or independent contractor, to agree not to engage in business that competes with the business of the other party. For example, when fulfilling obligations under their agreements, the employee or independent contractor may gain experience and establish valuable relationships with the employer's contractors and employees, vendors, and customers. A noncompetition agreement prevents the employee or independent contractor from immediately starting a business that competes with the former employer's business after the employment relationship ends.

## **Penalties for Noncompliance.**

The remedies in the new Washington law require timely compliance. The new law provides a remedy requiring the violator to pay the aggrieved employee or independent contractor the greater of actual damages, or a statutory penalty of \$5,000, plus reasonable attorney's fees, cost, and expenses.

## **Limits on the Noncompetition Agreements and the New Law.**

To support the growth of new business enterprises, the new law presumes that any noncompete that extends beyond 18 months after the termination of employment is unreasonable and unenforceable unless the employer can provide evidence supporting a longer term. A performer and performance space or third party scheduler are restricted to a noncompete of up to three days.

The new law does not restrict nonsolicitation or confidentiality agreements, agreements prohibiting the use or disclosure of trade secrets or inventions, or certain transfers of goodwill or a franchise.

## **Recommended New Year Contract Audits.**

Businesses should review all employment and independent contractor agreements that contain noncompetition provisions to verify they comply with the new law, including nonsolicitation, confidentiality, and trade secret/invention agreements. Reviewing the agreements is prudent, because other state and federal laws, including the Defend Trade Secret Act, may require revisions to the contracts or business practices. The business should include onboarding and exit interview practices in the audits.

And, revisiting your policies concerning post-employment restrictions are an opportunity to revisit other topics:

- workplace arbitration,
- notifications to employees under the Defend Trade Secret Act,
- nonsolicitation and confidentiality agreements, and
- trade secret and invention agreements.

Updating agreements, modifying intake policies and documentation, exit interview strategies, and sending notices to affected employees should be on your checklist in 2020.

Check [Buchalter.com](http://Buchalter.com) for additional updates on state and federal labor and employment laws.



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