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New Oregon Legislation Further Restricts the Use of Noncompetition Agreements

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The Oregon Legislature recently passed a new bill ([SB 169](#)) that will have a major impact on the use of noncompetition agreements in Oregon. These amendments to Oregon's existing noncompetition statute, ORS 653.295, will become effective on **January 1, 2022**, and will apply to all Oregon noncompetition agreements entered into on or after that date. The most significant changes to the statute are described below.

Reduced Term. Under the current version of the law, the term of a noncompetition agreement may not exceed 18 months. The amended law reduces the maximum term to only **12 months**.

Revised Minimum Salary Threshold. Under the current version of the law, a noncompetition agreement may not be enforced unless the total amount of the employee's annual gross salary and commissions, "calculated on an annual basis, at the time of the employee's termination exceeds the median family income for a four-person family, as determined by the United States Census Bureau for the most recent year available at the time of the employee's termination." The amended law specifies that the employee's annual gross salary and commissions must exceed **\$100,533**," adjusted annually for inflation pursuant to the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor immediately preceding the calendar year of the employee's termination."

Noncompliant Agreements Will Automatically Be Void. Under the current version of the law, a noncompetition agreement that does not meet the requirements of the statute are "voidable," which Oregon courts have interpreted as requiring an employee to take affirmative steps to void the agreement. The amended law now specifies that noncompliant agreements are "**void and unenforceable.**"

Many existing requirements of Oregon's noncompetition statute remain unaffected, including the requirement that the employer inform the employee in a written employment offer at least two weeks before the first day of the employee's employment that a noncompetition agreement is required as a condition of employment or that the noncompetition agreement is entered into

upon a subsequent bona fide advancement. Likewise, in order to enforce a noncompetition agreement, an employer still must demonstrate a protectable interest, and the employee must be exempt pursuant to ORS 653.020.

Although these changes will impact the use of noncompetition agreements in Oregon moving forward, they will not impact other types of restrictive covenants, such as confidentiality and nonsolicitation agreements. Employers should use this opportunity to evaluate their restrictive covenant agreements to ensure they will remain in compliance with Oregon's noncompetition statute.



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