



ML Strategies Alert

Employee Non-compete Bill Advancing in Legislature

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Legislation limiting employee non-compete agreements in Massachusetts advanced on Monday in the Joint Committee on Labor and Workforce Development. Co-chaired by Rep. John Scibak and Sen. Dan Wolf, the Committee approved a redrafted version of House Bill 1701 filed by Rep. Lori Ehrlich in January 2015. The compromise legislation incorporates some of the details outlined by House Speaker Robert A. DeLeo in his March speech to the Greater Boston Chamber of Commerce.

The redrafted bill would limit the use of non-competition agreements to 12 months in most circumstances, and prevent employers from enforcing the agreements on the following categories of workers: employees classified as nonexempt under the Fair Labor Standards Act, 29 U.S.C. 201-219; college students; employees 18 and younger; or employees that have been terminated without cause or laid off. Employers would also be required to notify new hires of any non-compete agreements at either time of formal offer or 10 business days before the start of employment, depending on which comes first.

Non-compete agreements, under which an employee agrees not to enter into a similar profession in competition against the employer, are frequently used in the technology and financial industries to prevent employees from passing along proprietary information to competitors. Tech entrepreneurs have long criticized such practices for unnecessarily stifling innovation and blocking employees from changing jobs. As legislators seek to address these concerns, business groups that originally stood in opposition to eliminating non-competes seemed open to compromise at the time of Speaker DeLeo's speech.

Support from big employers may falter due to a surprise "garden leave" clause in the compromise bill. Under this provision, employers are required to pay workers with a non-compete agreement of 50% of the employee's highest annualized salary from the last two years until the contract expires.

In an [article by the *Boston Globe*](#), Greater Boston Chamber of Commerce's Chief Executive, Jim Rooney stated, "That was unexpected, and I think would be a problem for us. It creates a dynamic in which an employer would have to basically pay someone for not working... This doesn't feel right."

Chairman Scibak, a South Hadley Democrat, defended the provision on Monday, stating, "If there's value in terms of keeping a particular employee out of the market, if you will, then that employee has some value, and I think that value is worth considering in terms of some compensation."

Past legislative efforts have attempted to limit the use of non-competes. Former Governor Deval Patrick proposed to prohibit the use of non-compete agreements in Massachusetts, but faced great opposition from trade groups in the business community. Similar efforts for compromise failed in the Legislature.

As the Committee advances the bill, Governor Baker has stated he is interested in resolving the issue through a

middle-ground that does not completely ban non-compete clauses. If enacted and signed by the governor, the legislation would only affect agreements signed after July 1, 2016.

ML Strategies will continue to report on the bill as it progresses through the Legislature.

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