

Massachusetts Lawmakers Hear Testimony on Non-Compete Legislation

November 06, 2017 || By [Julie Cox](#), [Maxwell J. Fathy](#), Sarah Engell

The Joint Committee on Labor and Workforce Development held a hearing on Tuesday, October 31 to receive testimony on the several bills introduced this session addressing the use of non-compete agreements in Massachusetts. Representatives Lori Ehrlich ([HB2366](#)) and Bradley Jones ([HB2371](#)) have introduced bills in the House, and Senators Jason Lewis ([SB1020](#)), Eileen Donoghue ([SB840](#)), Will Brownsberger ([SB988](#)), and Pat Jehlen ([SB1017](#)) have introduced bills in the Senate. The majority of those who testified at the hearing spoke broadly about issues related to non-competes, though some did comment on specific bills.

A representative of the Associated Industries of Massachusetts (AIM) testified in support of Representative Jones's bill, reflecting the business group's willingness to place some restrictions on the use of non-competes. Jones's bill limits the duration of non-compete agreements to one year, the geographic scope of non-compete agreements to areas where an employee had job responsibilities over the previous year, and the type of work covered to services the employee provided in the last two years of employment. It would prohibit enforcement of non-competes with interns, employees eligible for overtime, laid-off employees, and employees age 18 and under. The bill also contains a garden leave clause that requires the continued payment of at least 50 percent of an employee's existing salary for the post-employment period that an employee is restricted by a non-compete. The AIM representative said that there is no evidence that non-compete agreements hurt innovation in the commonwealth. Senator Lewis, the committee's Senate chairman, pushed back on this statement by citing economic and academic research. He also questioned AIM's claim that scaling back non-competes would limit company buyouts. AIM's representative asserted that their members believe that non-competes protect their business's intellectual property and make them feel safe staying and investing in Massachusetts.

Representative Ehrlich testified in support of her bill, which Senator Brownsberger filed in the Senate. Their bills (HB2366/SB988) are similar to Representative Jones's bill, while also requiring employers to notify an employee within 10 days of their termination whether the employer intends to enforce the non-compete. Representative Ehrlich stated that their legislation would bring fairness into a dynamic that is currently skewed against workers. She said that these agreements are overused, mentioning that both of her daughters were asked to sign non-compete agreements as interns. While testifying in support of his bill, Senator Brownsberger thanked the committee for taking the issue seriously and recognizing the difficulty of finding a solution that can satisfy all parties.

Former Attorney General Martha Coakley testified with the CEO of Dicerna Pharmaceuticals, Doug Fambrough, to request that lawmakers support provisions in the bills that update the state's trade secret laws. She said that Massachusetts should require plaintiffs to make more specific claims when taking a competitor to court over alleged theft of intellectual property. Fambrough added that at companies such as Dicerna, resources are diverted from critical patient research to fend off trade secret litigation launched without specificity.

Ari Glantz, representing the New England Venture Capital Association (NEVCA), stated that NEVCA feels that strong garden leave and notice provisions are integral to getting companies to reduce the use of non-compete agreements. Matt Marx, a professor at Boston University's Questrom School of Business, testified about data that suggests that women are disproportionately discouraged from starting businesses because of non-compete agreements. Several concerned constituents also shared personal stories of employment difficulties caused by non-compete agreements.

The bills are expected to remain before the Labor and Workforce Committee until after the new year. The House and Senate passed bills to limit the use of non-competes last year, but negotiations between the branches broke down in conference committee.

ML Strategies will continue to monitor and report on non-compete legislation and other issues relevant to employers periodically throughout the session.

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