

Publications

Kansas Enacts New Employer-Friendly Law Clarifying Enforceability of Non-Solicitation Agreements

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Kansas has recently joined the expanding list of jurisdictions to pass or introduce legislation related to restrictive covenants. Except this time, the legislation substantially modifies the state's approach to restrictive covenants to provide employers with expanded protections and clearer guidelines for non-compete and non-solicitation agreements. On April 8, 2025, Kansas Governor Laura Kelly signed Senate Bill 241 into law, amending the Kansas Restraint of Trade Act (K.S.A. 50-163) to clarify the enforceability of employee and customer non-solicitation covenants. The amendment will go into effect on July 1, 2025.

Initially, the Restraint of Trade Act provided it does not apply to covenants not to compete. However, whether the Act covered non-solicitation provisions was unclear. The amended Act now provides that non-solicitation provisions are "*conclusively presumed*" enforceable if they meet certain criteria regarding employee non-solicitation and customer non-solicitation. With respect to employee non-solicitation, the restriction must either (1) seek to protect the employer's confidential or trade secret information, or (2) be limited to a two-year term following the termination of the employment relationship.

As it relates to customer non-solicitation, the restriction must be limited to a two-year term and apply only to "material contact customers" in order to be conclusively presumed enforceable. "Material contact customers" include any "customer or prospective customer that is solicited, produced or serviced, directly or indirectly, by the employee or any customer or prospective customer about whom the employee, directly or indirectly, had confidential business or proprietary information or trade secrets in the course of the employee's relationship with the customer." Customer and employee non-solicitation agreements must also be in writing.

To the extent there are covenants that are not presumed to be enforceable and are determined to be overbroad or otherwise not reasonably necessary to protect a business entity's legitimate business interest, a "court shall modify the covenant, enforce the covenant as modified and grant only the relief necessary to protect such interests."

In sum, the Kansas law will now explicitly require courts to modify overbroad restrictive covenants.

Employers should consider reviewing their existing restrictive covenants to determine whether to align them with the new statutory language. Contact your Vorys attorney with questions about the new Kansas law or restrictive covenant statutes in other jurisdictions.