

Publications

Virginia Expands Restrictions on Non-Compete Agreements

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Virginia has joined the growing list of states passing and expanding legislation restricting the use of non-compete agreements. Beginning July 1, 2026, if employers want to enforce a non-compete agreement against an employee terminated without cause, they must provide the employee with severance benefits. In addition, non-compete agreements for health care professionals will be unenforceable, except in connection with the sale of a business. These restrictions are part of Virginia [Senate Bill 170](#) and [House Bill 627](#), which amend Virginia Code § 40.1-28.7:8.

Virginia's Existing Approach

Currently, Virginia law prohibits non-compete agreements for low-wage employees who are entitled to overtime compensation under the Fair Labor Standards Act (FLSA). In January 2026, the Court of Appeals of Virginia issued a decision clarifying the scope of this law with respect to low-wage employees. In *James R. Barrera v. Sentry Force Security, LLC*, the Court distinguished between customer non-solicitation provisions and employee non-solicitation provisions. The Court held that agreements restricting the solicitation of customers and clients is not a "covenant not to compete" for purposes of the statute and therefore is enforceable against low-wage employees. However, agreements restricting solicitation of the employer's employees is a "covenant not to compete," which is unenforceable against low-wage employees.

Key Changes Under the New Legislation

Senate Bill 170

- **Severance Requirement:** Non-compete agreements are unenforceable against employees who are discharged without cause unless the employer provides severance benefits or other monetary payment.
- **Disclosure Obligation:** The severance benefits or monetary payment must be disclosed to the employee at the time the non-compete

agreement is executed.

- **Exception for Cause:** If an employee is discharged for cause, the employer is not required to provide severance for the non-compete to be enforceable.
- **Existing Agreements:** Senate Bill 170 does not invalidate, alter, or affect any non-compete agreement entered into prior to July 1, 2026.

House Bill 627

- **Health Care Professionals:** Employers may not enter into, enforce, or threaten to enforce non-compete agreements with health care professionals. This includes individuals licensed, registered, or certified by the Board of Medicine, Nursing, Counseling, Optometry, Psychology, or Social Work.
- **Exception for Sale of Business:** Non-compete agreements are enforceable if they are part of the sale of a business.
- **Repayment of Expenses:** Employers may require departing health care professionals who have been employed for less than five years to repay all or a prorated portion of recruiting, education, or training expenses.
- **Non-Solicitation Provisions:** Employers may include non-solicitation provisions in employment agreements for customers the employee had material contact with during his or her employment for the purpose of providing products or services that are substantially similar to those provided by the employer, except for any notice or communication requirements under state or federal law.
- **Existing Agreements:** House Bill 627 does not invalidate, alter, or affect any non-compete agreement entered into prior to July 1, 2026.

Conclusion

As states like Virginia continue to expand existing legislation that restricts the ability of employers to enforce restrictive covenants, employers should review their employment, non-compete, non-solicitation, and confidentiality agreements to ensure compliance with state laws and court holdings.