

## Publications

### Washington Bans Nearly All Non-Compete Agreements

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Washington recently joined the growing list of states passing broad bans on non-compete agreements. The new law represents a significant expansion of Washington's existing restrictions on non-competes, non-solicitation agreements, and educational repayment restrictions. The law becomes effective June 30, 2027, and prohibits nearly all non-compete agreements regardless of when the agreement was signed.

#### Washington's Current Approach

Both the current and new law apply broadly to anyone who does business in the state and employs one or more individuals. Washington's current regulatory structure for non-compete agreements invalidates non-competes for employees who (for 2026) earn less than \$126,859 and independent contractors earning less than \$317,147 (both thresholds are adjusted annually for inflation). The current law also provides for disclosure, duration, and consideration requirements, as well as specific rules for layoffs. The new law takes a blanket approach.

#### The New Blanket Ban

The new law invalidates nearly all non-competes for both employees and independent contractors, regardless of their income threshold. Beginning in 2027, employers will be prohibited from attempting or threatening to enforce those agreements or from representing to others that the employee is under a non-compete agreement. The prohibition is retroactive, applying to non-competes entered into before the law's passage. However, any legal proceedings involving non-competes before the effective date will apply the existing law. Non-compete agreements will still be permitted in connection with the sale or purchase of a business for individuals purchasing or disposing of an ownership interest of at least one percent of the business. This will be the only exception for non-compete agreements.

## Expanded Scope

The new law further expands the definition of non-competes to include any provision in an agreement that “threatens, demands, requires, or otherwise effectuates that an individual return, repay, or forfeit any right, benefit, or compensation, as a consequence of the individual engaging in a lawful profession, trade, or business of any kind.” It appears that this provision would prohibit agreements that require employees to return compensation or benefits such as stock options or signing/relocation bonuses if they engage in post-employment competition.

On the other hand, the new law explicitly carves out training repayment agreement provisions (TRAPs) that meet four requirements:

- They only cover actual out-of-pocket educational expenses,
- They last no longer than 18 months after the employee’s start date,
- They are pro-rated based on the remainder of the 18-month period, and
- The obligation to repay is forgiven if the employee leaves for “good cause” (e.g., leaving work to relocate for the employment of a spouse or partner or separation from work due to illness or disability of the employee or their immediate family).

## Non-Solicitation and Confidentiality Agreements

The new law still permits confidentiality agreements and those that prohibit the disclosure of trade secrets. Employers also may continue to use non-solicitation agreements if the agreement meets certain criteria. The non-solicitation agreement must be narrowly tailored and only prohibit the former employee from soliciting current or prospective clients, customers, or patients if the employee had a substantial direct relationship with them during employment. The restriction cannot last longer than 18 months after termination. However, an agreement that directly or indirectly prohibits accepting or transacting business with a client, customer, or patient is not a “non-solicitation agreement.”

## Notice Requirement

Employers must make “reasonable efforts” to provide written notice to current and former employees and independent contractors with active non-compete agreements that their noncompete covenants are void and unenforceable. This notice must be provided by October 1, 2027.

## Conclusion

States, including California, North Dakota, Oklahoma, Minnesota, and now Washington, continue to advance broad bans on non-compete and/or non-solicitation agreements. Washington’s new law also comes amid the FTC’s recent indications that it may aggressively pursue case-by-case analysis of non-competes that are too broad, uniform, or applied to employees who do not pose a significant threat of unfair competition. Employers with Washington-based employees should review their existing non-compete, non-solicitation, and repayment agreements to ensure compliance with the new restrictions before June 2027.