

## Groundhog Day for Massachusetts Non-Compete Reform

By Erik J. Winton

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Once again, the Massachusetts legislature was unable to agree on non-compete reform legislation by the July 31, 2016, end of the current legislative session. The House and Senate had passed versions of non-compete reform that differed on key provisions. At the end of the session, however, the House and Senate failed to pass a compromise bill. (For details, see our article, [Down to the Wire for Proposed Non-Compete Reform Legislation in Massachusetts.](#))

While efforts at non-compete reform are dead in the water until the process begins anew at the start of the next two-year legislative session in January 2017, non-compete reform legislation appears to have moved closer to approval with each legislative session. Given Governor Charlie Baker's public statement in support of some type of non-compete reform, non-compete legislation may have the momentum needed to gain support early in the next legislative session.

The focus on non-compete reform in Massachusetts, the passage of the Federal Defense of Trade Secrets Act, and case-law developments in this area, should provide employers with ample incentive to review their agreements and related processes to ensure that current agreements provide the best opportunity for enforcement and protection of valuable company assets. Simple process changes, such as ensuring that a non-compete agreement is discussed before or at the time an offer is extended, and following consistent protocol as to which employees are required to sign such agreements and when, can avoid costly litigation over the enforceability of a non-compete, or at least give employers a better chance at prevailing in such litigation. Changes to the agreements themselves, such as increasing protections of non-disclosure and non-solicitation provisions, can minimize the risk associated with employee departures even if non-compete reform becomes a reality in Massachusetts.

Please contact Jackson Lewis if you have any questions about non-compete, non-disclosure, and non-solicitation agreements.

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