

Legal Update Article

Bipartisan Bill to Ban Most Non-Compete Agreements Reintroduced in U.S. Senate

By Clifford R. Atlas, Erik J. Winton & Justin E. Theriault

February 3, 2023

Meet the Authors



Clifford R. Atlas

(He/Him)

Principal

(212) 545-4017

Clifford.Atlas@jacksonlewis.com

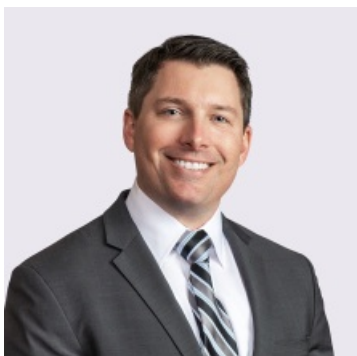


Erik J. Winton

Principal

(617) 367-0025

Erik.Winton@jacksonlewis.com



Justin E. Theriault

Principal

(860) 331-2588

Justin.Theriault@jacksonlewis.com

Related Services

Restrictive Covenants, Trade
Secrets and Unfair Competition

A bipartisan group of U.S. Senators has reintroduced a bill, dubbed the [Workforce Mobility Act of 2023](#), that would largely ban the use of employer non-compete agreements nationwide as a matter of federal law. This follows on the heels of the proposed rule by the Federal Trade Commission (FTC) that would make most employment non-compete agreements, as well as “de facto” non-competes, an unfair or deceptive trade practice under federal law.

The Act, previously introduced in 2019 and 2021, was reintroduced by Senators Christopher Murphy (D-Conn.) and Todd Young (R-Ind.) and is co-sponsored by Senators Tim Kaine (D-Va.) and Kevin Cramer (R-N.D.).

If passed, the Act would codify the use of employment non-competes as an unfair trade practice under federal law. The Act provides that, with certain limited exceptions, “no person shall enter into, enforce, or attempt to enforce a noncompete agreement with any individual who is employed by, or performs work under contract with, such person with respect to activities of such person in or affecting commerce,” and that noncompete agreements will have no force or effect.

Under the Act’s definitions, a “noncompete agreement” means an agreement entered into after the date of the enactment of the Act between a person and an individual performing work for the person that restricts such individual, after the working relationship between the person and the individual terminates, from performing:

- Any work for another person for a specified period of time;
- Any work in a specified geographical area; or
- Any work for another person that is similar to such individual’s work for the person that is a party to such agreement.

Limited exceptions to the ban permit non-competes under specified conditions, including in connection with the sale of certain interests in a business or the dissolution of, or disassociation from, partnerships.

The Act would authorize the FTC, federal Department of Labor, state attorneys general, and individual employees to bring actions against employers who violate the Act to seek penalties, damages, injunctions, and other relief. Claims under the Act would also be exempted from arbitration and joint-action waivers, including waivers of joint, class, and collective actions.

The Act would require all employers with employees in or affecting commerce to post notice of the provisions of the Act in a conspicuous place where notices to employees and applicants for employment are customarily posted physically or electronically.

Our Restrictive Covenants, Trade Secrets and Unfair Competition Practice Group is in the process of analyzing the specific provisions of the Act and will be providing a detailed update. Jackson Lewis attorneys are available to assist with any questions concerning the bill or the FTC’s proposed rule concerning non-competes, as well as any other restrictive covenant inquiries.

©2023 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on employment and labor law since 1958, Jackson Lewis P.C.'s 1,000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged and stable, and share our clients' goals to emphasize belonging and respect for the contributions of every employee. For more information, visit <https://www.jacksonlewis.com>.