

Expanded Definition of ‘Low-Wage’ Employees in Virginia Non-Compete Ban: Employers Need to Act Now

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Takeaways

- Effective 07.01.25, a new amendment to Virginia’s non-compete law expands the definition of “low-wage” employees to include employees classified as non-exempt under the FLSA.
- The new definition will not apply retroactively to existing agreements.
- Employers should audit their employee classifications and policies that contain non-compete provisions.

Related links

- [Virginia Enacts Wage Theft, Non-Compete Laws Amidst Flurry of New Employee Protections](#)
- [SB1218, Covenants not to compete prohibited, low-wage employees, exceptions, civil penalty](#)
- [Notice of the Average Weekly Wage for 2025](#)

Article

Virginia is the most recent state to tighten restrictions on employment non-compete agreements. Governor Glenn Youngkin signed [a bill](#) expanding the definition of low-wage employees under the state’s existing prohibition on covenants not to compete, Va. Code Ann. § 40.1-28.7:8. Effective July 1, 2025, the statute will prohibit employers from entering into non-compete agreements with employees classified as non-exempt under the Fair Labor Standards Act (FLSA).

Existing Law

[As enacted in 2020](#), Va. Code Ann. § 40.1-28.7:8 broadly defined a “low-wage employee” as an employee whose average weekly earnings were less than \$1,137 (or \$59,124 a year), the average weekly wage of employees in the Commonwealth of Virginia.

On Dec. 10, 2024, the Virginia Department of Labor and Industry [announced](#) the 2025 average weekly wage for determining who is a “low-wage employee” is \$1,463.10 (or \$76,081.14 a year).

Amendment

Effective July 1, the definition of “low-wage employee” will include employees entitled to receive overtime pay under the FLSA, otherwise known as “non-exempt employees.” The amendment will not affect employees who meet the requirements for an exemption

as set forth by the FLSA and U.S. Department of Labor, such as executive, administrative, or professional employees.

In effect, employers will no longer be able to enter into non-compete agreements with non-exempt employees. The updated law will not affect existing non-compete agreements or those entered into before the July 1, 2025, effective date.

As amended, the law retains expressed exclusions for any employee who derives their earnings in whole or in predominant part from sales commissions, incentives, or bonuses paid. Similarly, the enforcement provisions remain unchanged. In addition to allowing employees to bring private causes of action against employers who enter into, enforce, or threaten to enforce a non-compete agreement with any low-wage employee, the statute authorizes the Virginia Department of Labor and Industry to issue civil penalties of \$10,000 as well as other penalties to employers who fail to satisfy posting requirements.

Takeaways for Employers

In preparing for the amendment to take effect, Virginia employers should audit their workforce and ensure that all exempt employees are correctly classified under the FLSA. Employers should also review any existing employment and restrictive covenant agreements, and planned revisions to them, to assess the amendment's impact on their workforce. Finally, employers who address the use of non-compete agreements in offer letters, severance agreements, employee handbooks, and other employee policies should review these documents before July 1, 2025, and ensure compliance with the amendment.

Please contact a Jackson Lewis attorney with any questions or to discuss your organization's trade secret protection program.

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