

# NJ Bill Broadly Banning Non-Competes + No-Poach Agreements Would Impact Employers Immediately

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June 4, 2025

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## Related Services

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## Takeaways

- S4385/A5708 would ban non-compete agreements, no poach agreements, and any clause that restrains anyone from engaging in a lawful profession or trade entered into before and after its effective date.
- This bill would not apply to non-compete clauses between employers and senior executives if the employer pays the senior executive's full salary and the restricted period is no longer than 12 months.
- The bill would not apply to causes of action related to non-compete clauses that accrued before its effective date or non-compete clauses entered into by an employer pursuant to a bona fide sale of a business.

## Related links

- [S4385/A5708](#) (bill)
- [Federal Trade Commission's Sweeping Final Rule to Ban Non-Competes: What You Need to Know](#)

## Article

The New Jersey Legislature is considering a bill ([S4385/A5708](#)) banning non-compete clauses, with limited exceptions, and prohibiting no-poach agreements between employers and workers.

Appearing to take a page from the now set-aside [Federal Trade Commission final rule](#), S4385/A5708 would broadly prohibit employers from requiring, enforcing, or attempting to enforce a non-compete clause against any worker who is not a senior executive. The bill defines a "senior executive" as a worker in a "policy-making position" with an annual salary not less than \$151,164.

The bill as currently drafted would apply to all non-compete agreements entered before and after its effective date. It would require employers to notify workers subject to existing non-competes within 30 days of its effective date that any such agreements are no longer legally enforceable.

The bill also declares no-poach agreements contrary to public policy and void.

## Requirements for Senior Executives

The bill bans non-compete clauses between employers and senior executives unless they meet the following criteria, including but not limited to:

1. The employer provides disclosure of the terms of the non-compete clause within 30 business days of the effective date, including the requirements of this bill and any

revisions required for compliance with this bill.

2. The non-compete clause is no broader than necessary to protect the employer's legitimate business interests.
3. The non-compete clause does not limit the senior executive for a period exceeding 12 months following termination.
4. The non-compete clause is limited to the geographical areas where the senior executive provided services or had a material presence.
5. The non-compete clause is limited to services provided during the last two years of employment.

The bill does not apply to non-compete clauses entered into by an employer pursuant to a bona fide sale of a business or if a cause of action related to a non-compete clause accrued before the bill's effective date.

### Penalties

Any worker subject to a non-compete clause or no-poach agreement in violation of the law may bring a civil action against the employer, and the court has jurisdiction to void the agreement and order appropriate relief, including but not limited to liquidated damages and reasonable attorney's fees.

Finally, the Department of Labor and Workforce Development could impose penalties up to \$1,000 on employers for failing to provide the required notice.

### Next Steps

The bill will take immediate effect once passed and signed into law. Employers in New Jersey that require employees to sign non-compete and non-poach agreements should keep an eye on developments as significant changes to employers' practices will be required if this bill becomes law. Jackson Lewis attorneys can assist with any aspect of compliance and answer questions regarding the legislation's provisions or applicability. For assistance, please contact your Jackson Lewis attorney.

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