Legal Update Article

Does Massachusetts Non-Compete Law Restrict Access to Federal Court or Arbitration?

By Erik J. Winton

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Meet the Authors

Erik J. Winton
Principal
(617) 367-0025
Erik.Winton@jacksonlewis.com

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The Massachusetts Noncompetition Agreement Act (Non-Compete Act) has yet to be tested, but its venue provision likely will come under special scrutiny. The venue provision governs the geographical location and forum in which a non-compete lawsuit may be maintained. Due to its apparent conflicts with federal law, the venue provision will likely be unenforceable to limit federal jurisdiction over related lawsuits or to prohibit or otherwise regulate arbitration of such lawsuits.

For a general review of the Non-Compete Act, which went into effect on October 1, 2018, see our article, Massachusetts Legislature (Finally) Passes Non-Compete Law.

The Venue Provision

The venue provision of the Non-Compete Act provides:

> All civil actions relating to noncompetition agreements subject to this section shall be brought in the county wherein the employee resides or, if mutually agreed upon by the employer and the employee, in the county of Suffolk; provided, however, that in any such action brought in the county of Suffolk, the superior court or the business litigation session of the superior court shall have exclusive jurisdiction.

This provision appears to conflict with federal law by limiting: (1) federal subject-matter jurisdiction; and (2) the ability of parties to enter into binding arbitration agreements.

Limitations on Federal Jurisdiction

The venue provision purports to partially bar parties from litigating Non-Compete Act claims in federal court. Such a restriction may violate the Supremacy Clause of the U.S. Constitution and is likely unenforceable.

By attempting to confer exclusive jurisdiction over Suffolk County statutory non-compete actions to the superior court (or its business litigation session), the venue provision appears to prohibit parties from commencing such actions in, or removing them to, federal court. Although the law oddly does not similarly restrict actions *outside of Suffolk County,* the question is whether the law can restrict federal jurisdiction *at all.*

Article III of the U.S. Constitution grants federal courts original jurisdiction over civil actions by two primary methods: (1) where the action arises under federal law (federal question jurisdiction); or (2) where the amount in controversy exceeds $75,000 and no plaintiff shares a state of citizenship with any defendant (diversity jurisdiction). Additionally, if an action includes certain claims that are subject to original jurisdiction and other claims that are not, federal courts may exercise "supplemental jurisdiction" over the additional claims if they "form part of the same case or controversy" as the claims that are subject to original jurisdiction.

The Non-Compete Act's venue provision appears to bar Suffolk County non-compete

actions from being brought in or removed to federal court, regardless of whether they trigger federal jurisdiction under Article III. In other words, the law unilaterally limits federal jurisdiction as granted by the Constitution and federal law, apparently violating the Supremacy Clause of the U.S. Constitution.

Courts have routinely rejected state efforts to limit federal jurisdiction. In*Railway Co. v. Whitton's Adm'r,* 80 U.S. 270 (1872), the U.S. Supreme Court held that a state law's venue provision could not prevent removal of a complaint to federal court on the basis of diversity jurisdiction. The Court stated that the federal court's jurisdiction "is not subject to State limitation." More recently, in *City of Chicago v. Int'l College of Surgeons,*522 U.S. 156 (1997), the Supreme Court arrived at the same conclusion, upholding the district court's exercise of supplemental jurisdiction over a state law claim. The federal district court in Massachusetts has followed this in at least two cases: *Landworks Creations, LLC v. United States Fid. & Guar. Co.,* No. 05-40072-FDS (Dist. Mass. Nov. 15, 2005); and *Monogram Indus., Inc. v. Zellen,* 467 F.Supp. 122 (Dist. Mass. Mar. 27, 1979).

Where federal law permits parties to prosecute or defend an action in federal court, no state law may deprive the parties of that course of action. The venue provision of the Massachusetts non-compete law, therefore, will not be enforceable to the extent that it seeks to limit federal jurisdiction over related lawsuits.

Limitations on Arbitration

In addition to unilaterally limiting federal jurisdiction over certain claims, the Non-Compete Act's venue provision appears to prevent parties from: (a) arbitrating covered claims, or (b) conducting such arbitrations in a forum of their choice. Here, the Non-Compete Act likely would be preempted by the Federal Arbitration Act (FAA).

One of the FAA's primary purposes was to codify the liberal policy favoring arbitration agreements. If an action is brought on an issue governed by a binding written arbitration agreement, and the subject matter of the agreement implicates interstate commerce, the parties to the agreement are entitled, under the FAA, to proceed in arbitration, as opposed to a judicial forum. Further, the FAA requires that the arbitration be conducted in accordance with the terms of the agreement — including the forum-selection clause.

In *Machado v. System4 LLC,* 465 Mass. 508, 515 (Mass. 2013), the Massachusetts Supreme Judicial Court held that enforcing a state statutory provision to "requir[e] a judicial forum for a particular type of dispute [is] a result the FAA clearly prohibits." Similarly, in *KKW Enters. v. Gloria Jean's Gourmet Coffees Franchising Corp.,* 184 F.3d 42 (1st Cir. 1999), the U.S. Court of Appeals for the First Circuit (which has jurisdiction over Massachusetts) held that where a state statute permits claims to be pursued in arbitration but prevents the arbitration from taking place outside the forum state (in that case, the arbitration agreement called for arbitrations to take place in Chicago), the statute's forum limitation would be preempted by the FAA.

The Non-Compete Act's venue provision confers exclusive jurisdiction over Suffolk County actions to the superior court (or its business litigation session) *to the apparent exclusion of an arbitral forum.* It also requires statutory non-compete cases to be brought in either Suffolk County or the county in which the party employee resides; thus, it bars the parties from contractually agreeing to a different location for arbitration. In these respects, the Non-Compete Act likely would be trumped by the FAA.

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Companies with questions about the Massachusetts non-compete law are encouraged to contact a Jackson Lewis attorney for legal assistance.

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