



OTTEN JOHNSON ALERT

Overhaul of Colorado's Non-Compete Statute Took Effect Last Month (Updated)

September 2022 • [David Brewster](#)

In March, our firm [wrote](#) about Colorado Senate Bill 21-271 (SB 21-271), with a particular emphasis on newly revised sentencing laws for employers executing unlawful non-compete agreements.

Since that time, Governor Jared Polis signed Colorado Senate [Bill 22-1317](#) (SB 22-1317) into law, effectuating substantial and overarching reforms to Colorado's Non-Compete Statute (C.R.S. § 8-2-113). By its terms, the amendments to the Non-Compete Statute enacted by SB 22-1317 apply to all employment agreements executed or renewed from and after August 10, 2022.

Most notably, Colorado law now prohibits non-compete agreements and covenants for employees earning less than the statutory threshold for "Highly Compensated Workers" which SB 22-1317 currently set at \$101,250.00 annually. That statutory "Highly Compensated Worker" threshold will be subject to annual inflation-based increases or adjustments by the Colorado Division of Labor Standards and Statistics.

Importantly, even with respect to "Highly Compensated Employees" earning above the statutory threshold, the amended C.R.S. § 8-2-113(2)(b) provides that a non-compete covenant is only enforceable if it "is for the protection of trade secrets and is no broader than is reasonably necessary to protect the employer's legitimate interest in protecting trade secrets." Thus, the practical effect of SB 22-1317 is such that only a narrow

subset of non-compete agreements are now seemingly permissible under Colorado law.

In addition, C.R.S. § 8-2-113 now specifies that, even where a non-compete covenant is otherwise permissible under Colorado law, that covenant is void unless (1) the employer provides notice of the covenant in advance of an acceptance of employment (or for current employees, within 14 days of the date upon which additional compensation is given to the employee providing consideration for the covenant); and (2) the employer provides required notice of the covenant in a separate document from all other covenants with the employee, and does so in a clear and conspicuous fashion.

With respect to satisfying statutory notice requirements, C.R.S. § 8-2-113(4)(d) now requires employers to provide the employee with the document containing the non-compete clause or agreement, identify the non-compete clause or agreement by name and “state that the agreement contains a covenant not to compete that could restrict the worker’s options for subsequent employment following their separation from [the] employer,” and to direct the employee to the sections or paragraphs of the agreement containing the non-compete provisions.

Finally, newly enacted C.R.S. § 8-2-113(6) now provides that, irrespective of any contractual provisions, Colorado law governs the enforceability of a non-compete covenant executed by an employee who primarily resided or worked in Colorado at the time of their termination, and the covenant may not require that employee to adjudicate the enforceability of the non-compete covenant outside of Colorado.

This alert does not provide an exhaustive list of all of the statutory changes enacted by SB 22-1317, however, the practical impact of SB 22-1317 is such that most non-compete covenants entered into or renewed after August 10, 2022 are now void under Colorado law. In light of the possible criminal and civil liability resulting from entering into impermissible non-compete covenants, and wide ranging applicability to all business endeavors irrespective of industry, we strongly encourage all employers who presently employ Colorado residents or conduct business in Colorado to review SB 22-1317 in detail, and contact our firm with any questions or concerns regarding these new statutory provisions.

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