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Utah Non-Compete Bill Passes In Scaled-Back Form

Insight — March 10, 2016

After six weeks of significant discussions with Utah legislators and business leaders involving numerous compromises, late Wednesday night both houses of the Utah legislature passed a significantly scaled-back bill restricting the duration of non-compete agreements in the State. The new law will apply to any post-employment restrictions created on or after May 10, 2016, but it does not affect current agreements.

One-Year Limitation on Non-Competes

While the original bill intended to ban non-compete agreements entirely, the compromised bill's most significant impact is that it limits the length of any Utah non-compete restrictions to one year after employment ends. Any post-employment restrictions on competitive activity longer than one year will be void.

Importantly, there are exemptions from the one-year limit for non-solicitation provisions, non-disclosure and confidentiality agreements, and non-competes related to the sale of a business. The bill retains the common-law standard that restrictive covenants must be reasonable in geographic or market scope in order to be enforceable.

Employers Now Required to Pay Attorneys' Fees if They Try To Enforce Unenforceable Non-Competes

Another significant provision of the bill is the imposition of costs: if an employer tries to enforce a post-employment restrictive covenant, through arbitration or by filing a civil action, and the restriction is found to be unenforceable under this law, the employer will be liable for the employee's costs associated with arbitration, attorney fees and court costs, and actual damages. The bill sponsors intended this provision to eliminate "bad-actor" employers who try to enforce unreasonable restrictions. Employers should revisit their post-employment restrictive covenants, ensure their reasonableness, and be wary about this attorneys' fees penalty provision moving forward.

Compromises Led To Final Bill

This scaled-back version of the bill is vastly superior for Utah employers than the original bill introduced in early February. The original bill would have entirely prohibited most types of post-employment restrictions. We are proud of the pivotal contributions by our labor and employment attorneys, Bryan Benard and Cecilia Romero, and our government affairs team of Kate Bradshaw and Amanda Smith, in working toward the final version of the bill. Our team had daily contact with the bill sponsors, played

a key role on important negotiating teams with the Chamber, the Governor's Office of Economic Development, the Business Coalition, and the Utah Technology Council, and provided valuable testimony at the committee hearings. Representative Mike Schultz, the primary sponsor, was very open to suggestions, accessible, and willing to understand and incorporate business concerns. Thanks to these efforts, Utah employers still have the ability to limit competitive activities after the termination of employment for valid reasons.

If you intend to use non-compete agreements or impose other post-employment restrictions on certain employees, take time now to review those agreements and provisions to ensure they will be enforceable under Utah's new non-compete law. Again, this law will affect any agreements entered into after May 10, 2016. As always, if you have questions about the effect of this new law on your business, please contact me or your regular Holland & Hart attorney at 801-799-5800.

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