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Idaho's Non-Compete Law Set to Enhance Employer Enforcement

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Idaho businesses will have an easier time enforcing non-compete agreements that restrict key employees and independent contractors from engaging in post-employment competition, thanks to a bill passed by the Idaho legislature this week. HB 487 provides that if a court finds that a key employee or key independent contractor breaches a non-compete agreement, a rebuttable presumption of irreparable harm is established. The burden of overcoming that presumption shifts to the former employee to show that he or she has no ability to adversely affect the employer's legitimate business interests. The bill was sent on Tuesday to Governor Otter, who is expected to sign it into law.

Pro-Business Non-Compete Provision

While some neighboring states, such as Utah, have passed legislation to restrict the use of non-competes and other post-employment restrictive covenants, Idaho has strengthened its non-compete law in favor of protecting employer rights. Not without controversy, this bill reportedly grew out of a recent lawsuit filed by LeapFox Learning, a Meridian computer training company, against its former business director. LeapFox Learning's owner, Codi Galloway, reportedly testified before the Idaho Senate and Human Resources Committee, that after her former business director left to work for a competitor, she lost customers, vendors, and contractors as a result of that ex-employee's use of LeapFox Learning's company's contact lists and marketing and business strategies.

Tough Burden For Employees To Overcome

Opponents of the bill argued that it infringes on an employee's ability to change jobs and move to a better position or even start his or her own company. In addition, by placing the burden to rebut the presumption of irreparable harm on the former employee, it essentially forces the employee to prove a negative, namely that he or she cannot harm the former employer's business. Assistant Chief Deputy Brian Kane is quoted in the Idaho Statesman as saying, "The burden necessary to overcome this presumption may be extremely difficult, if not impossible."

Proponents, however, reply that the presumption of irreparable harm applies only to non-competes of key employees or key independent contractors, which are defined as the highest paid five percent of employees or independent contractors. Consequently, the amendment will not change enforcement proceedings for non-competes involving lower

level employees.

Review Non-Competes For Idaho Compliance

To take advantage of numerous rebuttable presumptions contained in Idaho's non-compete law, employers should review their non-competes to make certain they do not exceed the time, geographic, and business scope parameters deemed reasonable under the law. In particular, review section 44-2704 of the Idaho Code or consult with competent legal counsel to ensure your restrictive covenants protect your business assets in the best way possible.

If you have any questions about the new bill, or your company's non-compete agreements, contact Dean Bennett at adbennett@hollandhart.com or 208-383-3993.

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