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Virginia Tightens the Screws on Non-Competes – Again

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Virginia employers should review and update their non-compete agreements now. On March 4, 2026, the Virginia General Assembly approved Senate Bill No. 170 (the Bill), which would significantly limit the enforceability of non-compete agreements by conditioning enforcement on the payment of severance in certain circumstances. The Bill now heads to Governor Spanberger's desk and is expected to be signed into law.

If enacted, the legislation will further narrow when and against whom Virginia employers may enforce post-employment restrictive covenants, increasing litigation risk and compliance complexity.

Overview of the New Proposed Restriction

The Bill amends Virginia's non-compete statute, Virginia Code § 40.1-28.7:8, to provide that a non-compete agreement is unenforceable against any employee who is discharged without cause and does not receive severance benefits or other monetary payments.

To preserve enforceability, the Bill requires that any severance or other monetary payments be disclosed at the time the non-compete agreement is executed.

Notably, the Bill:

- Does not define "cause" or "severance benefits"
- Does not establish a minimum severance amount
- Applies broadly to all employees and all employers
- Contains no exception for non-competes entered into in connection with the sale of a business

These omissions create uncertainty for employers and increase the likelihood of disputes over enforceability.

How This Expands Existing Virginia Law

Virginia already imposes some of the most restrictive non-compete laws in the country. In recent years, the General Assembly has:

- Prohibited non-competes for certain "low-wage" employees
- Expanded protections to include all non-exempt employees under the Fair Labor Standards Act

For reference, "low-wage" employees currently include individuals earning less than Virginia's average weekly wage (\$1,507.01), as well as certain independent contractors, interns, students, apprentices, and trainees.

The Bill goes further, extending non-compete limitations beyond low-wage and non-exempt workers to cover any employee terminated without cause, regardless of compensation level.

Effective Date and Retroactivity

The Bill's restrictions apply only to non-compete agreements entered into, amended, or renewed on or after July 1, 2026. Agreements executed before that date are not retroactively affected – a narrow but important window for employers to assess existing contracts.

Increased Litigation Risk for Employers

The Bill also expands employees' ability to bring a private right of action against employers who attempt to enforce a prohibited non-compete.

An employee may sue within two years of the latest of:

- The date the non-compete was signed
- The date the employee learned of the non-compete
- The termination of employment
- Any step taken by the employer to enforce the agreement

Employers found to have attempted enforcement of a violative non-compete may face injunctive relief, liquidated damages, lost compensation, and attorneys' fees.

Why This Matters

Virginia courts already refuse to modify or "blue pencil" overbroad restrictive covenants, often rendering non-competes entirely unenforceable. The anticipated enactment of SB 170 further raises the stakes, making careful drafting – and advance planning – essential.

If enacted, Virginia would join Massachusetts, Nevada, and Washington in restricting non-compete enforcement against employees terminated without cause, reflecting a broader national trend. Similar legislation has recently been introduced in Texas, Michigan, North Carolina, Kentucky, Vermont, Arizona, and Tennessee.

What Virginia Employers Should Do Now

- Review and update non-compete agreements to address the Bill's severance disclosure requirements.
- Define "for cause" terminations as clearly and broadly as possible.
- Evaluate severance practices in light of enforceability concerns.
- Consult with experienced employment counsel before enforcing existing restrictive covenants.

If you have questions about this legislation or would like assistance proactively ensuring compliance, please contact your Baker Donelson [Labor & Employment](#) attorney.