



General Assembly

January Session, 2021

Raised Bill No. 906

LCO No. 3466



Referred to Committee on LABOR AND PUBLIC EMPLOYEES

Introduced by:
(LAB)

AN ACT CONCERNING NON-COMPETE AGREEMENTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2021*) For purposes of sections 1 to
2 4, inclusive, of this act:

3 (1) "Base salary and benefits" means (A) wages, as defined in section
4 31-71a of the general statutes, earned over the course of the prior
5 calendar year, without consideration of any overtime or bonus
6 compensation, and (B) health insurance benefits and other fringe
7 benefits received by an employee over the course of the prior calendar
8 year;

9 (2) "Covenant not to compete" means a contract, provision or
10 agreement entered into, amended, extended or renewed on or after July
11 1, 2021, that restrains a worker from, or imposes penalties on a worker
12 for, engaging in any lawful profession, occupation, trade, calling or
13 business of any kind in any geographic area of the state for any period
14 of time after separation from employment, but does not mean (A) a
15 nonsolicitation agreement, (B) a nondisclosure or confidentiality

16 agreement, or (C) a contract, provision or agreement in which an
17 employee agrees not to reapply for employment with an employer after
18 being terminated by such employer;

19 (3) "Covenant not to compete predicated on ownership interest"
20 means a covenant not to compete made (A) in anticipation of a sale of
21 the goodwill of a business or all of the seller's ownership interest in a
22 business, or (B) as part of a partnership or ownership agreement and
23 such contract or agreement expires and is not renewed, unless, prior to
24 such expiration, the employer makes a bona fide offer to renew the
25 contract on the same or similar terms and conditions;

26 (4) "Employee" means any individual employed or permitted to work
27 by an employer;

28 (5) "Employer" has the same meaning as provided in section 31-71a
29 of the general statutes;

30 (6) "Exclusivity agreement" means a contract, provision or agreement
31 entered into, amended, extended or renewed on or after July 1, 2021,
32 that restrains a worker from, or imposes penalties on a worker for,
33 having an additional job, supplementing their income by working for
34 another employer, working as an independent contractor or being self-
35 employed;

36 (7) "Exempt employee" means an employee not included in the
37 definition of "employee" in section 31-58 of the general statutes;

38 (8) "Franchisee" has the same meaning as provided in section 42-133e
39 of the general statutes;

40 (9) "Franchisor" has the same meaning as provided in section 42-133e
41 of the general statutes;

42 (10) "Legitimate business interest" means an interest in the protection
43 of trade secrets, or confidential information that does not qualify as a
44 trade secret, or an interest in preventing solicitation of the employer's
45 customers;

46 (11) "Monetary compensation" means (A) wages, as defined in section
47 31-71a of the general statutes, earned over the course of the prior year,
48 or portion thereof for which the employee was employed, annualized
49 based on the period of employment and calculated as of the earlier of
50 the date enforcement of the covenant not to compete is sought or the
51 date of separation from employment, and (B) payments made to
52 independent contractors based on services rendered, annualized based
53 on the period during which the independent contractor provided
54 services and calculated as of the earlier of the date enforcement of the
55 covenant not to compete is sought or the date of separation from
56 employment;

57 (12) "Nonsolicitation agreement" means (A) a contract, provision or
58 agreement between an employer and employee that prohibits
59 solicitation by an employee, upon termination of employment of (i) any
60 employee of the employer to leave the employer, or (ii) of any customer
61 of the employer, to cease or reduce the extent to which it is doing
62 business with the employer, or (B) a contract, provision or agreement
63 between an employer and any customer thereof that prohibits
64 solicitation by the customer of an employee of the employer to cease or
65 reduce the extent to which it is doing business with the employer;

66 (13) "Separation agreement" means an agreement accompanying the
67 termination or separation of employment without cause in which the
68 employee releases claims or potential claims against the employer;

69 (14) "Separation from employment" means any event at which an
70 employment or independent contractor relationship ends; and

71 (15) "Worker" means an employee or an independent contractor.

72 Sec. 2. (NEW) (*Effective July 1, 2021*) (a) No employer or contractor
73 may request or require a worker to sign or agree to a covenant not to
74 compete, and any such covenant not to compete shall not be enforceable
75 against such worker, unless all of the following conditions are met: (1)
76 Such covenant does not restrict the worker's competitive activities for a
77 period of more than one year following the termination or separation of

78 the employee; (2) such covenant is necessary to protect a legitimate
79 business interest of the employer, and such business interest could not
80 reasonably be protected via less restrictive means, including, but not
81 limited to, a nondisclosure agreement, nonsolicitation agreement, or
82 reliance on the protections provided by the provisions of chapter 625 of
83 the general statutes; (3) such covenant is no more restrictive than
84 necessary to protect such business interest in terms of the covenant's
85 duration, geographic scope, type of work and type of employer; (4) such
86 worker is an exempt employee earning monetary compensation of more
87 than three times the minimum fair wage as defined in section 31-58 of
88 the general statutes, or such worker is an independent contractor
89 earning monetary compensation of more than five times said minimum
90 fair wage; and (5) the written text of such covenant is provided to the
91 worker no later than ten business days prior to the earlier of (A) the
92 deadline for acceptance of the offer of employment or the offer to enter
93 into an independent contractor relationship, or (B) the date of signing of
94 such covenant; (6) such covenant expressly states that the worker has
95 the right to consult with counsel prior to signing; (7) such covenant is
96 signed by the worker and the employer or contractor separately from
97 any other agreement underlying the relationship; (8) if such covenant is
98 added to an existing employment or independent contractor
99 relationship, it is supported by sufficient consideration independent
100 from continuation of the employment or contractor relationship; (9)
101 such covenant does not require the worker to submit to adjudication in
102 a forum outside of Connecticut, or otherwise purport to deprive the
103 worker of the protections or benefits of this section; and (10) such
104 covenant does not unreasonably interfere with the public's interests and
105 is consistent with this section, other laws of this state and public policy.

106 (b) Even if otherwise valid under this section, a covenant not to
107 compete that applies to geographic areas in which an employee neither
108 provided services nor had a material presence or influence within the
109 last two years of employment, or that applies to types of work that the
110 employee did not perform during the last two years of employment,
111 shall be presumed entirely unenforceable.

112 (c) Notwithstanding the provisions of subdivision (1) of subsection
113 (a) of this section, a covenant not to compete shall be permitted and
114 enforceable for a period no longer than two years following separation
115 from employment if such covenant is a part of an agreement under
116 which the worker is compensated with the worker's base salary and
117 benefits, minus any outside compensation, for the entire period of such
118 covenant.

119 (d) Notwithstanding the provisions of subsection (a) of this section, a
120 covenant not to compete predicated on ownership interest shall be
121 permitted and enforceable unless (1) the employment or contractual
122 relationship is terminated by the employer or contractor; or (2) the
123 employment or contractual relationship is terminated by the worker for
124 good cause attributable to the employer or contractor.

125 (e) This section shall not apply to any covenant not to compete as
126 defined in section 20-14p, 20-681, or 31-50b of the general statutes.

127 Sec. 3. (NEW) (*Effective July 1, 2021*) (a) No employer or contractor
128 may request or require a worker to sign or agree to an exclusivity
129 agreement unless the worker is an exempt employee earning monetary
130 compensation of more than three times the minimum fair wage as
131 defined in section 31-58 of the general statutes, or the worker is an
132 independent contractor earning monetary compensation of more than
133 five times said minimum fair wage.

134 (b) This section shall not apply when the worker's having an
135 additional job, supplementing their income by working for another
136 employer, working as an independent contractor, or being self-
137 employed would: (1) Imperil the safety of the worker, the worker's
138 coworkers or the public; or (2) substantially interfere with the
139 reasonable and normal scheduling expectations of the employer or
140 contractor.

141 (c) This section shall not be construed to alter any obligations of an
142 employee to an employer under existing law, including, but not limited
143 to, the common law duty of loyalty and laws preventing conflicts of

144 interest and any corresponding policies addressing such obligations.

145 Sec. 4. (NEW) (*Effective July 1, 2021*) (a) The party seeking to enforce
146 a covenant not to compete or an exclusivity agreement against a worker
147 shall have the burden of proof in any enforcement proceeding. The
148 party required to continue to compensate an employee or independent
149 contractor in an agreement under subsection (c) of section 2 of this act
150 shall have the burden of proof in any proceeding to enforce such
151 requirement to continue to compensate such employee or independent
152 contractor.

153 (b) The provisions of any contract or agreement constituting a
154 covenant not to compete or exclusivity agreement may be held partially
155 enforceable only to the extent that such provisions constitute a
156 combination of several distinct covenants. A covenant intended by the
157 parties to be an entirety may only be held fully enforceable or
158 unenforceable.

159 (c) Any severable provisions of any contract or agreement that
160 includes a covenant not to compete or an exclusivity agreement that is
161 held unenforceable under the provisions of sections 1 to 3, inclusive, of
162 this act shall remain in full force and effect, including, but not limited
163 to, any provisions that require the payment of damages resulting from
164 any injury suffered by reason of termination or separation of
165 employment.

166 (d) The Attorney General, on behalf of a worker or workers, or any
167 worker aggrieved by a violation of this section may bring a civil action
168 in the Superior Court for any and all relief provided in this section. In
169 such actions, the plaintiff shall carry the burden of proof by a
170 preponderance of the evidence.

171 (e) If a court or arbitrator determines that a covenant not to compete
172 or an exclusivity agreement violates this section, the violator is liable for
173 the greater of the aggrieved worker's actual damages or a statutory
174 penalty of five thousand dollars, in addition to reasonable attorney's
175 fees, expenses and court costs.

176 (f) Notwithstanding section 31-69a of the general statutes, no
177 employer, officer, agent or other person who violates any provision of
178 this section shall be liable to the Labor Department for a civil penalty.

179 Sec. 5. Section 31-50a of the general statutes is repealed and the
180 following is substituted in lieu thereof (*Effective July 1, 2021*):

181 (a) No employer may require any person employed in the
182 classification 339032 of the standard occupational classification system
183 of the Bureau of Labor Statistics of the United States Department of
184 Labor to enter into an agreement prohibiting such person from engaging
185 in the same or a similar job, at the same location at which the employer
186 employs such person, for another employer or as a self-employed
187 person, unless the employer proves that such person has obtained trade
188 secrets, as defined in subsection (d) of section 35-51, of the employer.

189 (b) (1) Any person who is aggrieved by a violation of this section may
190 bring a civil action in the Superior Court to recover damages and for
191 such injunctive and equitable relief as the court deems appropriate.

192 (2) The Labor Commissioner may request the Attorney General to
193 bring an action in the superior court for the judicial district of Hartford
194 for restitution on behalf of any person injured by any violation of this
195 section and for such injunctive or equitable relief as the court deems
196 appropriate.

197 (c) The provisions of this section shall apply to agreements entered
198 into, renewed or extended on or after October 1, 2007, and before July 1,
199 2021.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2021</i>	New section
Sec. 2	<i>July 1, 2021</i>	New section
Sec. 3	<i>July 1, 2021</i>	New section
Sec. 4	<i>July 1, 2021</i>	New section
Sec. 5	<i>July 1, 2021</i>	31-50a

Statement of Purpose:

To set certain requirements for covenants not to compete.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]