General Assembly

Raised Bill No. 6594

January Session, 2023

LCO No. **3545**

Referred to Committee on LABOR AND PUBLIC EMPLOYEES

Introduced by:
(LAB)

AN ACT CONCERNING NONCOMPETE AGREEMENTS.

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

Section 1. (NEW) (*Effective July 1, 2023*) As used in this section and sections 2 to 4, inclusive, of this act:

(1) "Base salary and benefits" means (A) wages, as defined in section 31-71a of the general statutes, earned over the course of the prior calendar year, excluding any overtime or bonus compensation, and (B) health insurance benefits and other fringe benefits received by an employee over the course of the prior calendar year;

(2) "Covenant not to compete" means a contract, provision or other agreement entered into, amended, extended or renewed on or after July 1, 2023, that restrains, or imposes penalties on, a worker from engaging in any lawful profession, occupation, trade, calling or business of any kind in any geographic area of the state for any period of time after separation from employment, but does not mean (A) a nonsolicitation agreement, provided such agreement (i) does not restrict a worker's activities for more than one year, and (ii) is no more restrictive than

necessary in duration, geographic scope, type of work and type of employer, (B) a nondisclosure or confidentiality agreement, (C) a contract, provision or other agreement in which an employee agrees not to reapply for employment with an employer after being terminated by such employer, (D) any covenant not to compete, pursuant to sections 20-14p, 20-68i and 30-50b of the general statutes, or (E) any contract, provision or other agreement made (i) in anticipation of a sale of the goodwill of a business or all of the seller's ownership interest in a business, or (ii) as part of a partnership or ownership agreement;

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

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

(5) "Exclusivity agreement" means a contract, provision or other agreement entered into, amended, extended or renewed on or after July 1, 2023, that restrains a worker from, or imposes a penalty on a worker for being simultaneously employed by another employer, working as an independent contractor or being self-employed;

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

(7) "Legitimate business interest" means an interest in (A) the protection of trade secrets or confidential information that does not qualify as a trade secret, or (B) preserving established goodwill with the employer's customers;

(8) "Minimum fair wage" has the same meaning as provided in section 31-58 of the general statutes;

(9) "Monetary compensation" means (A) wages, as defined in section 31-71a of the general statutes, earned over the course of the prior calendar year or portion thereof, for which the employee was employed, annualized based on the period of employment and calculated as of (i)

the date enforcement of the covenant not to compete is sought, or (ii) the date of separation from employment, whichever is earlier, and (B) payments made to independent contractors based on services rendered, annualized based on the period during which the independent contractor provided services and calculated as of (i) the date enforcement of the covenant not to compete is sought, or (ii) the date of separation from employment, whichever is earlier;

(10) "Nonsolicitation agreement" means (A) a contract, provision or other agreement between an employer and an employee that prohibits such employee, upon separation of employment, from soliciting (i) any employee of the employer to leave the employer, or (ii) any customer of the employer to cease or reduce the extent to which it is doing business with the employer, or (B) a contract, provision or other agreement between an employer and a customer of such employer that prohibits such customer from soliciting an employee of the employer to cease or reduce the extent to which such employee is doing business with the employer;

(11) "Separation from employment" means the date in which an employment or independent contractor relationship ends; and

(12) "Worker" means an employee or an independent contractor.

Sec. 2. (NEW) (*Effective July 1, 2023*) (a) No covenant not to compete shall be enforceable against a worker unless all of the following conditions are met:

(1) The covenant not to compete restricts such worker's competitive activities for a period of not more than one year following the separation of employment;

(2) The covenant not to compete is necessary to protect a "legitimate business interest" of the employer and such legitimate business interest could not reasonably be protected by less restrictive means, including, but not limited to, a nondisclosure agreement, nonsolicitation agreement or reliance on the protections provided by the provisions of

chapter 625 of the general statutes;

(3) The covenant not to compete is no more restrictive than necessary to protect a legitimate business interest in terms of the duration, geographic scope, type of work and type of employer of the covenant not to compete;

(4) The worker is an exempt employee;

(5) A written copy of the covenant not to compete is provided to the worker not later than ten business days prior to (A) the worker's deadline to accept an offer of employment or to enter into an independent contractor relationship, or (B) the date the covenant not to compete is signed, whichever is earlier;

(6) The covenant not to compete contains a statement of the worker's rights under the covenant not to compete, provided such statement shall include the following: (A) Not all covenants not to compete are enforceable, (B) a covenant not to compete for a worker whose monetary compensation is less than the amount described in subsection (b) of this section is illegal, (C) a worker may contact the Attorney General if such worker believes they are subject to an illegal covenant not to compete, and (D) a worker has the right to consult with counsel prior to signing a covenant not to compete;

(7) The covenant not to compete is signed by the worker and the employer or contractor separately from any other agreement establishing the relationship between the worker and the employer or contractor;

(8) If the covenant not to compete is added to an existing employment or independent contractor relationship, the covenant not to compete is supported by sufficient consideration and is not solely the continuation of such employment or contractor relationship;

(9) The employment or contract relationship was not terminated by the worker for good cause attributable to the employer or contractor;

(10) The covenant not to compete does not require a worker to submit to adjudication in a forum outside of this state or otherwise deprive such worker of the protections or benefits of this section; and

(11) The covenant not to compete does not unreasonably interfere with the public interest and is consistent with the provisions of this section, other laws of this state and public policy.

(b) No covenant not to compete shall be unenforceable against a worker if such worker is (1) an employee whose monetary compensation is less than three times the minimum fair wage, or (2) an independent contractor whose monetary compensation is less than five times such minimum fair wage.

(c) A covenant not to compete shall be presumed unenforceable if such covenant applies to (1) geographic areas in which a worker neither provided services nor had a material presence or influence within the last two years of employment, or (2) types of work that the worker did not perform during the last two years of employment.

(d) Notwithstanding the provisions of subdivision (1) of subsection (a) of this section, a covenant not to compete shall be enforceable for a period of not longer than two years following separation from employment if such covenant not to compete is a part of an agreement under which the worker is compensated with the worker's base salary and benefits, minus any outside compensation, for the entire duration of such covenant not to compete.

Sec. 3. (NEW) (*Effective July 1, 2023*) (a) Except as provided in subsection (b) of this section, no employer or contractor may request or require a worker to sign or agree to an exclusivity agreement, unless such worker is (1) an "exempt employee" whose monetary compensation is more than three times the minimum fair wage, or (2) an independent contractor whose monetary compensation is more than five times the minimum fair wage.

(b) An employer or contractor may request or require a worker to sign

an exclusivity agreement if such worker's additional employment, work as an independent contractor or being self-employed would (1) imperil the safety of such worker, such worker's coworkers or the public, or (2) substantially interfere with the reasonable and normal scheduling expectations for such worker, except on-call shift scheduling shall not be considered a reasonable scheduling expectation for the purposes of this subsection.

(c) The provisions of this section shall not be construed to alter any obligations of an employee to an employer under existing law, including, but not limited to, the common law duty of loyalty, laws preventing conflicts of interest and any corresponding policies addressing such obligations.

Sec. 4. (NEW) (*Effective July 1, 2023*) (a) (1) The party seeking to enforce a covenant not to compete or an exclusivity agreement against a worker shall have the burden of proof in any enforcement proceeding for such covenant not to compete or exclusivity agreement.

(2) The party required to compensate a worker in an agreement described in subsection (d) of section 2 of this act shall have the burden of proof in any proceeding to cease compensating a worker.

(b) No court may modify a covenant not to compete that violates the provisions of sections 1 to 3, inclusive, of this act for purposes of enforcing such covenant not to compete.

(c) If a covenant not to compete or an exclusivity agreement is held unenforceable under sections 1 to 3, inclusive, of this act, any severable provision of a contract or other agreement unrelated to such covenant not to compete shall remain in full force and effect, including, but not limited to, any provisions that require the payment of damages resulting from any injury suffered by separation of employment.

(d) The Attorney General may bring a civil action in Superior Court on behalf of any worker aggrieved by a violation of any provision of sections 1 to 3, inclusive, of this act for any and all relief provided in this

section.

(e) If a court or an arbitrator determines that a covenant not to compete or an exclusivity agreement in sections 1 to 3, inclusive, of this act, the violator shall be liable for (1) the aggrieved worker's actual damages, or (2) a penalty of five thousand dollars, whichever is greater, in addition to reasonable attorney's fees, expenses and court costs.

(f) No employer, officer, agent or other person who violates any provision of this section shall be liable for an additional penalty under section 31-69 of the general statutes.

Sec. 5. Section 31-50a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2023*):

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

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

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

(c) The provisions of this section shall apply to agreements entered into, renewed or extended on or after October 1, 2007, and before July 1, 2023.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*July 1, 2023*	New section
Sec. 2	*July 1, 2023*	New section
Sec. 3	*July 1, 2023*	New section
Sec. 4	*July 1, 2023*	New section
Sec. 5	*July 1, 2023*	31-50a

Statement of Purpose:

To set certain requirements for covenants not to compete and exclusivity agreements.

[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.]