



General Assembly

January Session, 2023

Raised Bill No. 6594

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:

1 Section 1. (NEW) (*Effective July 1, 2023*) As used in this section and
2 sections 2 to 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, excluding any overtime or bonus compensation, and (B)
6 health insurance benefits and other fringe benefits received by an
7 employee over the course of the prior calendar year;

8 (2) "Covenant not to compete" means a contract, provision or other
9 agreement entered into, amended, extended or renewed on or after July
10 1, 2023, that restrains, or imposes penalties on, a worker from engaging
11 in any lawful profession, occupation, trade, calling or business of any
12 kind in any geographic area of the state for any period of time after
13 separation from employment, but does not mean (A) a nonsolicitation
14 agreement, provided such agreement (i) does not restrict a worker's
15 activities for more than one year, and (ii) is no more restrictive than

16 necessary in duration, geographic scope, type of work and type of
17 employer, (B) a nondisclosure or confidentiality agreement, (C) a
18 contract, provision or other agreement in which an employee agrees not
19 to reapply for employment with an employer after being terminated by
20 such employer, (D) any covenant not to compete, pursuant to sections
21 20-14p, 20-68i and 30-50b of the general statutes, or (E) any contract,
22 provision or other agreement made (i) in anticipation of a sale of the
23 goodwill of a business or all of the seller's ownership interest in a
24 business, or (ii) as part of a partnership or ownership agreement;

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

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

29 (5) "Exclusivity agreement" means a contract, provision or other
30 agreement entered into, amended, extended or renewed on or after July
31 1, 2023, that restrains a worker from, or imposes a penalty on a worker
32 for being simultaneously employed by another employer, working as
33 an independent contractor or being self-employed;

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

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

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

42 (9) "Monetary compensation" means (A) wages, as defined in section
43 31-71a of the general statutes, earned over the course of the prior
44 calendar year or portion thereof, for which the employee was employed,
45 annualized based on the period of employment and calculated as of (i)

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

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

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

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

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

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

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

77 chapter 625 of the general statutes;

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

82 (4) The worker is an exempt employee;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

169 section.

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

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

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

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

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

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

196 (c) The provisions of this section shall apply to agreements entered
197 into, renewed or extended on or after October 1, 2007, and before July 1,
198 2023.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2023</i>	New section
Sec. 2	<i>July 1, 2023</i>	New section
Sec. 3	<i>July 1, 2023</i>	New section
Sec. 4	<i>July 1, 2023</i>	New section
Sec. 5	<i>July 1, 2023</i>	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.]