



General Assembly

**Substitute Bill No. 6594**

January Session, 2023



**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  
10 July 1, 2023, that restrains, or imposes penalties on, a worker from  
11 engaging in any lawful profession, occupation, trade, calling or  
12 business of any kind in any geographic area of the state for any period  
13 of time after separation from employment, but does not mean (A) a  
14 nonsolicitation agreement, provided such agreement (i) does not  
15 restrict a worker's activities for more than one year, and (ii) is no more  
16 restrictive than necessary in duration, geographic scope, type of work  
17 and type of employer, (B) a nondisclosure or confidentiality  
18 agreement, (C) a contract, provision or other agreement in which an  
19 employee agrees to not reapply for employment with an employer

20 after being terminated by such employer, (D) any covenant not to  
21 compete, pursuant to sections 20-14p, 20-681 and 30-50b of the general  
22 statutes, or (E) any contract, provision or other agreement made (i) in  
23 anticipation of a sale of the goodwill of a business or all of the seller's  
24 ownership interest in a business, or (ii) as part of a partnership or  
25 ownership agreement;

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

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

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

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

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

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

43 (9) "Monetary compensation" means (A) wages, as defined in  
44 section 31-71a of the general statutes, earned over the course of the  
45 prior calendar year or portion thereof, for which the employee was  
46 employed, annualized based on the period of employment and  
47 calculated as of (i) the date that enforcement of the covenant not to  
48 compete is sought, or (ii) the date of separation from employment,  
49 whichever is earlier, and (B) payments made to independent

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

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

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

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

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

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

74 (2) The covenant not to compete is necessary to protect a legitimate  
75 business interest of the employer and such legitimate business interest  
76 could not reasonably be protected by less restrictive means, including,  
77 but not limited to, a nondisclosure agreement, nonsolicitation  
78 agreement or reliance on the protections provided by the provisions of  
79 chapter 625 of the general statutes;

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

84 (4) The worker is an exempt employee;

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

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

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

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

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

109 (10) The covenant not to compete does not require a worker to

110 submit to adjudication in a forum outside of this state or otherwise  
111 deprive such worker of the protections or benefits of this section; and

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

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

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

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

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

139 (b) An employer or contractor may request or require a worker to  
140 sign an exclusivity agreement if such worker's additional employment,

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

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

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

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

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

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

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

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

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

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

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

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

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

200 (c) The provisions of this section shall apply to agreements entered  
201 into, renewed or extended on or after October 1, 2007, and before July  
202 1, 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 Legislative Commissioners:**

In Section 4(e), "is in violation of" was added for clarity.

**LAB**      *Joint Favorable Subst.*