



## LEGAL UPDATES

# Beyond Non-Competes: New MN Law Bans Non-Solicitation by Service Providers

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Following a statewide ban on employment non-compete agreements that went into effect in 2023, a new Minnesota law that took effect on July 1, 2024, has expanded the state's limitations on restrictive employment covenants, now prohibiting non-solicitation agreements between service providers and their clients in services agreements.

The new law (at Minn. Stat. § 181.9881) prohibits service providers from using non-solicitation agreements that would prevent their clients from soliciting or hiring the service provider's employees or independent contractors, except for certain computer professionals. While the 2023 law focused on non-competes in employment contracts with individual workers, the new law bans similar restraints on trade in services agreements between organizations.

While some aspects of the new law are unclear and are yet to be refined, the law has potentially significant ramifications for the health care industry and staffing models and may impact the terms of management agreements, temporary staffing arrangements and professional services contracts.

## New Limitations on Service Providers

The new law describes the types of prohibited restrictive covenants broadly, stating that no service provider may "*restrict, restrain, or prohibit in any way* a customer from directly or indirectly soliciting or hiring an employee of a service provider." (Emphasis added.) This language may be construed so broadly as to prevent service providers from using any form of material disincentive, such as conversion or penalty fees to dissuade clients from hiring the services provider's employees.

The law provides greater flexibility and freedom of action to hospitals, health systems and other health care providers who can no longer be prohibited from approaching and directly hiring physicians, mid-level practitioners, administrative personnel or others whose services are provided under a professional services agreement, management agreement, staffing contract or the like.

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But, the law poses a significant risk to those services providers whose business model relies on deploying workers to health care organizations with the security of having a non-solicitation in their underlying agreements. The new law will leave those service providers without contractual recourse for solicitation of their personnel who drive the value of their business.

The only exception to the new law is a narrow one—it does not apply to workers providing professional business consulting for computer software development under certain circumstances.

## **Effective Date; Renewal of Contracts**

The statute's effective date language states that the statute applies to all contracts entered into on or after July 1, 2024. In a March 5, 2024, House Judiciary Finance and Civil Law Committee meeting in the Minnesota House of Representatives, Representative Emma Greenman (DFL-63B) stated that the statute was not intended to be retroactive. Accordingly, it appears that the effective date language was intended to provide for a prospective ban on service provider non-solicitation agreements entered into on or after July 1, 2024.

Other language in the statute, however, has created some confusion on whether the ban is retroactive. In addition to the language banning service provider non-solicitation agreements, the statute contains the following provisions:

- (b) Any provision of an existing contract that violates paragraph (a) is void and unenforceable.
- (c) When a provision in an existing contract violates this section, the service provider must provide notice to their employees of this section and the restrictive covenant in the existing contract that violates this section.

This language has led to some debate as to whether the Minnesota Legislature intended to invalidate prohibited agreements that were entered into prior to July 1, 2024, and to ban them thereafter. The legislative history of the statute provides some clarity. Representative Greenman stated in the March 5, 2024, House Judiciary Finance and Civil Law Committee meeting in the Minnesota House of Representatives that the notice provision, does not “disrupt current contracts but does require notice” to employees that the restrictions in the current contract exist and of the change in Minnesota law. She also stated that “if [an employer] has a current contract, that language will continue, but you at least need to tell your workers about that and the legal change.” Representative Greenman's remarks suggest that the notice provision requires notice to employees of any non-solicitation restrictions that might impact them, whether or not entered into before or after July 1, 2024, with any such restrictions being void if entered into on or after July 1, 2024. For any agreement entered into on or after July 1, 2024, that contains an invalid non-solicitation provision, the notice to employees must provide notice that the restrictions violate the state law and identify which section of the agreement violates the law.

Given the lack of clarity in the statute itself, entities should stay tuned for further developments that might include agency guidance on the statute, a future amendment or court rulings.

## **Enforcement**

The new law does not explicitly give employees a right to recover attorney's fees incurred from enforcement, unlike the prohibition on non-competes enacted in 2023. However, the attorney general is authorized to enforce the laws in Chapter 181 including the new non-solicitation prohibition, under Minnesota Statutes Section 181.1721.

## **What Steps Should Service Providers Take?**

Service providers can take the following steps to comply with the new law and to help reduce risk:

- Consider use of robust and tailored confidentiality provisions in contracts with your employees and independent contractors—which are still enforceable—so if your workers are hired by a client you can rely on the individuals' commitments with respect to confidentiality of your business information.



- Review existing services agreements to determine if any provisions might be unenforceable under the new law, with a specific focus on any non-solicitation, financial penalty for solicitation/hiring or similar restrictions. Stay tuned for developments on whether these provisions are now prohibited or will be valid until the contract is renewed.
- Review new service agreements to ensure there are no non-solicitation terms that violate the new law.
- If you enter into a contract with a provision that is void under the new law, create and distribute notices to employees and contractors.
- Issue written notice to employees of any restrictions that may impact them that were entered into prior to July 1, 2024, so that employees are aware of those restrictions.
- Consult with employment counsel on any questions you have about existing or future agreements.
- Stay tuned for further potential developments.

If you have any questions regarding this new Minnesota law, please contact [Megan Anderson](#), [Catie Bitzan Amundsen](#) or your regular Lathrop GPM attorney.