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Electronic Alert

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New Changes to Oregon's Statute on Employee Noncompetition Agreements

By Josh Goldberg

The Oregon legislature has once again modified Oregon's statute on noncompetition agreements. Although many of the changes are relatively modest departures from the current law and only apply to new noncompetition agreements entered into on or after January 1, 2022, employers should be aware of these changes and start now to update noncompetition agreements.

Noncompetition agreements entered into on or after January 1, 2022, are void and unenforceable unless they adhere to these requirements:

- The noncompetition period can only last up to 12 months after the employee's termination of employment. (Current law allows the noncompetition period to be up to 18 months after termination.)
- An employee's annualized gross salary and commissions must be at least $100,533 at the time of their termination. This amount will automatically increase according to inflation each year.
- The employee must be classified under one of the "white collar" exemptions from overtime wages.
- The agreement must be in writing. It cannot be an oral agreement.
- The employer must include in a written employment offer at least two weeks before the first day of employment that a noncompetition agreement is required as a condition of employment, or the noncompetition agreement must be entered into upon a subsequent bona fide advancement.
- Within 30 days after the date of termination, the employer must provide the employee a signed, written copy of the noncompetition agreement.

Even if an employee does not meet the duties and salary requirements, employers may nonetheless enforce an otherwise valid noncompetition agreement, if an employer provides a written agreement that it will pay the employee during the period of noncompetition the greater of either:

- at least 50% of the employee's annualized gross salary and commissions at the time of termination; or
- 50% of the statutory amount ($100,533, adjusted for inflation).

Employers should also note that nonsolicitation agreements remain exempt from these statutory requirements, but this exemption should not be taken for granted. New litigation trends indicate nonsolicitation agreements are frequently noncompetition agreements in disguise. In light of these new restrictions on noncompetition agreements, employers should take a fresh look at their nonsolicitation agreements as well to ensure they can maintain their exemption.

For questions related to noncompetition, nonsolicitation, and nondisclosure agreements, contact Josh Goldberg at 503-228-2107 or jgoldberg@barran.com.