



Law Trends Today

Oregon Changes Non-Competition Rules

By Wayne D. Palmer, Esq.
And Dennis Steinman, Esq.

Under the current law in Oregon, employers can sign agreements with an employee not to compete after the employee quits or is terminated. Oregon courts have always scrutinized those agreements to make sure that they are reasonable.

As long as the agreement was signed when the employee was first hired or was promoted and the terms are reasonable, the courts have generally upheld those non-compete agreements.

THE NEW LAW

That's all about to change. The Oregon legislature just passed a new law that imposes additional restrictions on employers seeking to enforce non-competition agreements.

The new law allows non-compete agreements only for high-paid employees.

The new law is intended to limit the use of non-competition agreements to relatively high-paid employees who receive prior notice that one will be

required as a condition of their employment. Effective January 1, 2008, it will be more difficult to have an enforceable non-compete employment agreement in Oregon.

Once the law takes effect, an employment non-competition agreement will not be enforced by the Oregon Courts unless:

1. The employer informs the employee in a written employment offer at least two weeks before the employee starts work that the non-compete is required, or that the non-competition agreement is entered into upon a subsequent *bona fide* advancement; and
2. The employee is exempt from Oregon minimum wage and overtime laws; and
3. The employer has a "protectable interest" such as access to trade secrets or competitively sensitive confidential information; and
4. The employee makes more than the median family income for a family of four as calculated by the census bureau (currently around \$62,000); and

5. The term of the non-competition agreement does not exceed two years from the date of the employee's termination.

The employer must pay one-half of the former employee's salary during the non-compete term.

If you do enter into a non-competition agreement and then later choose to enforce it, you must pay the former employee the greater of one-half of his or her salary or one-half of the median family income during the entire term of the restrictive period.

WHAT TO DO

Employers do not need to do anything with respect to non-competition agreements that are already in place. The law applies to future agreements, not those already in existence.

If employers want to have a non-competition agreement with a new hire, you must make sure that the non-competition agreement

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requirement is announced in an offer letter and that the offer letter is given at least two weeks before the employee starts work. If a non-competition agreement is important, some employers should consider delaying the employee's start date to insure that the employee has at least two weeks notice from the date of the notice before he or she starts employment.

The new law does not take effect until January 1, 2008.

But, remember, the new law does not take effect until January 1,

2008. So, any employee who is hired or promoted before then is still subject to the current law and would not be affected by the new law—even after it goes into effect.

We recommend that you consult with us before putting your new non-competition program into place.

If you have a question about how the new rules on non-competition agreements affect your business, please contact us.

Wayne D. Palmer practices employment litigation, healthcare, transportation, business, corporate, and family law.

Dennis Steinman practices employment, business, commercial, franchise and corporate law.

KELL, ALTERMAN & RUNSTEIN, LLP
520 SW Yamhill, Suite 600
Portland, Oregon 97204
Phone: (503) 222-3531
Fax: (503) 227-2980
wpalmer@kelrun.com
dsteinman@kelrun.com
Website: www.kelrun.com