

CLIENT ALERT: New Hampshire and Maine Pass Legislation Limiting Noncompetition Agreements for Lower Wage Workers – By Jeffrey S. Siegel

Both New Hampshire and Maine have modified their laws concerning employees whose employers may compel them to enter a noncompetition agreement.

On July 10, 2019, New Hampshire Governor Christopher Sununu signed into law Section 70-a of RSA 275, “Noncompete Agreements for Low-Wage Employees Prohibited” (the “Act”). The Act provides that “no employer shall require a low-wage employee to enter into a noncompete agreement” and a “noncompete agreement entered into between an employer and low-wage employee shall be void and unenforceable.” A “low wage employee” is defined as any employee who earns less than 200% of the federal minimum wage (currently \$7.25), which equates to approximately \$30,000 per year. The Act takes effect in 60 days (September 8, 2019). Employers in New Hampshire are also reminded that pursuant to RSA 275:70, employers must provide prospective employees with noncompete agreements prior to or with an offer of employment.

New Hampshire’s law follows on the heels of the passage of similar legislation in Maine. On June 28, 2019, Maine Governor Janet Mills signed a bill that bans Maine employers from entering into or renewing noncompete agreements with employees earning wages below four times the federal poverty level, which equates to slightly less than \$50,000 per year. The law further provides that prior to an offer of employment, an employer must disclose that a noncompete agreement will be required, and employers must provide a copy of the noncompete at least three business days before it must be signed. In addition, the noncompete will not take effect until either one year of employment or six months from the date the agreement is signed, whichever is later. The Maine law also prohibits no-poaching agreements by forbidding companies from entering into and enforcing a “restrictive employment agreement,” which is defined to be an agreement between employers that prohibit one employer from soliciting or hiring another employer’s employees or former employees. Maine’s law applies to agreements entered into after

September 18, 2019, and contains a \$5,000 minimum penalty for certain violations. See Me. Stat. tit. 26, § 599-A(1) and Me. Stat. tit. 26, § 599-B(1).

As states continue to legislate the use of noncompetition agreements, employers should work with their MBJ attorney to carefully strategize over the use and content of restrictive covenants.

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