

CLIENT ALERT: Rhode Island Joins Regional Trend Limiting Enforcement of Noncompetition Agreements - By Jeffrey S. Siegel

On July 15, 2019, Rhode Island's Governor signed into law the Rhode Island Noncompetition Agreement Act, R.I. Gen. Laws 28-58-1, *et seq.* (the "Act"), which limits the enforceability of noncompetition agreements. Rhode Island joins **Massachusetts**, as well as **Maine and New Hampshire** as jurisdictions which have recently regulated post-employment restrictive covenants by statute.

Like some of the other statutory schemes passed (such as Massachusetts), the Act applies to "noncompetition agreements," defined as an agreement between an employer and an employee under which the employee agrees he or she will not engage in certain specified activities after the end of the employment relationship. Specifically excepted out of the reach of the Act are the following (among others):

- Covenants not to solicit or hire employees of the employer;
- Covenants not to solicit or transact business with customers, clients, or vendors of the employer;
- Noncompetition agreements made in connection of the sale of a business;
- Noncompetition agreements with independent contractors or outside of the employment relationship;
- Nondisclosure or confidentiality agreements and invention assignment agreements; and;
- Noncompetition agreements made in connection with the cessation of employment if the employee is expressly given seven business days to rescind acceptance.

Categorically, noncompetition agreements under the Act are not enforceable against (i) an employee who is classified as nonexempt under the Fair Labor Standards Act; (ii) undergraduate or graduate students who participate in an internship or otherwise enter a short-term employment relationship with an employer, whether paid or unpaid, while enrolled in a full-time or part-time undergraduate or graduate educational institution; (iii) employees age 18 or younger; and (iv) low wage employees, defined as an employee whose annual earnings are not more than 250% of the federal poverty level (for 2019, \$30,350). The Act takes effect six months after passage (January 15, 2020).

The Rhode Island law clearly borrowed concepts and terms from the statutes passed in Massachusetts, Maine and New Hampshire. As more states continue to legislate the use and enforcement of noncompetition agreements, employers should review their approach to restrictive covenants and update their documents to ensure compliance. Please contact your M&J attorney for more information.

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