



General Assembly

February Session, 2022

Raised Bill No. 5249

LCO No. 1588



Referred to Committee on LABOR AND PUBLIC EMPLOYEES

Introduced by:
(LAB)

AN ACT CONCERNING NONCOMPETE AGREEMENTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2022*) As used in this section and
2 sections 2 to 4, inclusive, of this act:

3 (1) "Base salary and benefits" means (A) wages, as defined in section
4 31-71a of the general statutes, earned over the course of the prior
5 calendar year, without consideration of any overtime or bonus
6 compensation, and (B) health insurance benefits and other fringe
7 benefits received by an employee over the course of the prior calendar
8 year;

9 (2) "Covenant not to compete" means a contract, provision or
10 agreement entered into, amended, extended or renewed on or after July
11 1, 2022, that restrains a worker from, or imposes penalties on a worker
12 for, engaging in any lawful profession, occupation, trade, calling or
13 business of any kind in any geographic area of the state for any period
14 of time after separation from employment, but does not mean (A) a
15 nonsolicitation agreement, provided such agreement (i) does not restrict

16 a worker's activities for more than one year, and (ii) is no more
17 restrictive than necessary in duration, geographic scope, type of work
18 and type of employer, (B) a nondisclosure or confidentiality agreement,
19 (C) a contract, provision or agreement in which an employee agrees not
20 to reapply for employment with an employer after being terminated by
21 such employer, (D) any covenant not to compete, as defined in section
22 20-14p or 20-681 of the general statutes or as described in section 31-50b
23 of the general statutes, or (E) any contract, provision or agreement made
24 (i) in anticipation of a sale of the goodwill of a business or all of the
25 seller's ownership interest in a business, or (ii) as part of a partnership
26 or ownership agreement;

27 (3) "Employee" means any individual employed or permitted to work
28 by an employer;

29 (4) "Employer" has the same meaning as provided in section 31-71a
30 of the general statutes;

31 (5) "Exclusivity agreement" means a contract, provision or agreement
32 entered into, amended, extended or renewed on or after July 1, 2022,
33 that restrains a worker from, or imposes penalties on a worker for,
34 having an additional job, supplementing the worker's income by
35 working for another employer, working as an independent contractor
36 or being self-employed;

37 (6) "Exempt employee" means an employee not included in the
38 definition of "employee" in section 31-58 of the general statutes;

39 (7) "Legitimate business interest" means an interest in the protection
40 of trade secrets or confidential information that does not qualify as a
41 trade secret, or an interest in preserving established goodwill with the
42 employer's customers;

43 (8) "Monetary compensation" means (A) wages, as defined in section
44 31-71a of the general statutes, earned over the course of the prior
45 calendar year or portion thereof, for which the employee was employed,
46 annualized based on the period of employment and calculated as of the

47 earlier of the date enforcement of the covenant not to compete is sought
48 or the date of separation from employment, and (B) payments made to
49 independent contractors based on services rendered, annualized based
50 on the period during which the independent contractor provided
51 services and calculated as of the earlier of the date enforcement of the
52 covenant not to compete is sought or the date of separation from
53 employment;

54 (9) "Nonsolicitation agreement" means (A) a contract, provision or
55 agreement between an employer and employee that prohibits
56 solicitation by an employee, upon termination of employment, of (i) any
57 employee of the employer to leave the employer, or (ii) any customer of
58 the employer to cease or reduce the extent to which it is doing business
59 with the employer, or (B) a contract, provision or agreement between an
60 employer and any customer thereof that prohibits solicitation by the
61 customer of an employee of the employer to cease or reduce the extent
62 to which it is doing business with the employer;

63 (10) "Separation from employment" means any event in which an
64 employment or independent contractor relationship ends; and

65 (11) "Worker" means an employee or an independent contractor.

66 Sec. 2. (NEW) (*Effective July 1, 2022*) (a) No employer or contractor
67 may request or require a worker to sign or agree to a covenant not to
68 compete and any such covenant not to compete shall not be enforceable
69 against such worker unless all of the following conditions are met:

70 (1) Such covenant restricts the worker's competitive activities for a
71 period of not more than one year following the termination or
72 separation of the worker;

73 (2) Such covenant is necessary to protect a legitimate business interest
74 of the employer and such business interest could not reasonably be
75 protected by less restrictive means, including, but not limited to, a
76 nondisclosure agreement, nonsolicitation agreement or reliance on the
77 protections provided by the provisions of chapter 625 of the general

78 statutes;

79 (3) Such covenant is no more restrictive than necessary to protect such
80 business interest in terms of the covenant's duration, geographic scope,
81 type of work and type of employer;

82 (4) Such worker is an exempt employee;

83 (5) The written text of such covenant is provided to the worker not
84 later than ten business days prior to (A) the worker's deadline to accept
85 an offer from the employer or the contractor for employment or to enter
86 into an independent contractor relationship, or (B) the date such
87 covenant is signed, whichever is earlier;

88 (6) Such covenant contains a statement of the worker's rights
89 regarding covenants not to compete. Such statement shall include the
90 following: (A) Not all covenants not to compete are enforceable; (B)
91 covenants not to compete for workers earning less than the amount
92 provided in subsection (b) of this section are illegal; (C) the worker may
93 contact the Attorney General if the worker is subject to an illegal
94 covenant not to compete; and (D) the worker has the right to consult
95 with counsel prior to signing the covenant not to compete;

96 (7) Such covenant is signed by the worker and the employer or
97 contractor separately from any other agreement underlying the
98 relationship between the worker and the employer or contractor;

99 (8) If such covenant is added to an existing employment or
100 independent contractor relationship, it is supported by sufficient
101 consideration independent from continuation of the employment or
102 contractor relationship;

103 (9) The employment or contractual relationship was not terminated
104 by the worker for good cause attributable to the employer or contractor;

105 (10) Such covenant does not require the worker to submit to
106 adjudication in a forum outside of this state or otherwise purport to
107 deprive the worker of the protections or benefits of this section; and

108 (11) Such covenant does not unreasonably interfere with the public's
109 interests and is consistent with the provisions of this section, other laws
110 of this state and public policy.

111 (b) No employer or contractor may request or require a worker to
112 sign or agree to a covenant not to compete, and any such covenant not
113 to compete shall be unenforceable against such worker, (1) if such
114 worker is an employee earning monetary compensation of less than
115 three times the minimum fair wage, as defined in section 31-58 of the
116 general statutes, or (2) such worker is an independent contractor earning
117 monetary compensation of less than five times such minimum fair
118 wage.

119 (c) A covenant not to compete that applies to geographic areas in
120 which a worker neither provided services nor had a material presence
121 or influence within the last two years of employment, or that applies to
122 types of work that the worker did not perform during the last two years
123 of employment, shall be presumed entirely unenforceable.

124 (d) Notwithstanding the provision of subdivision (1) of subsection (a)
125 of this section, a covenant not to compete shall be permitted and
126 enforceable for a period of not longer than two years following
127 separation from employment if such covenant is a part of an agreement
128 under which the worker is compensated with the worker's base salary
129 and benefits, minus any outside compensation, for the entire period of
130 such covenant.

131 Sec. 3. (NEW) (*Effective July 1, 2022*) (a) No employer or contractor
132 may request or require a worker to sign or agree to an exclusivity
133 agreement, unless (1) the worker is an exempt employee earning
134 monetary compensation of more than three times the minimum fair
135 wage, as defined in section 31-58 of the general statutes, or (2) the
136 worker is an independent contractor earning monetary compensation of
137 more than five times said minimum fair wage.

138 (b) An exclusivity agreement may be permitted if a worker having an
139 additional job, supplementing the worker's income by working for

140 another employer, working as an independent contractor or being self-
141 employed would: (1) Imperil the safety of the worker, the worker's
142 coworkers or the public; or (2) substantially interfere with the
143 reasonable and normal scheduling expectations of the worker, provided
144 on-call shift scheduling shall not be considered a reasonable scheduling
145 expectation for the purposes of this subsection.

146 (c) The provisions of this section shall not be construed to alter any
147 obligations of an employee to an employer under existing law,
148 including, but not limited to, the common law duty of loyalty and laws
149 preventing conflicts of interest and any corresponding policies
150 addressing such obligations.

151 Sec. 4. (NEW) (*Effective July 1, 2022*) (a) The party seeking to enforce
152 a covenant not to compete or an exclusivity agreement against a worker
153 shall have the burden of proof in any enforcement proceeding. The
154 party required to continue to compensate a worker in an agreement
155 under subsection (d) of section 2 of this act shall have the burden of
156 proof in any proceeding to enforce such requirement to continue to
157 compensate such worker.

158 (b) No court shall judicially modify a covenant not to compete that
159 violates the provisions of sections 1 to 3, inclusive, of this act, in order
160 to partially enforce such covenant.

161 (c) Any severable provisions of any contract or agreement that
162 includes a covenant not to compete or an exclusivity agreement that is
163 held unenforceable under the provisions of sections 1 to 3, inclusive, of
164 this act, shall remain in full force and effect, including, but not limited
165 to, any provisions that require the payment of damages resulting from
166 any injury suffered by reason of termination or separation of
167 employment.

168 (d) The Attorney General, on behalf of a worker or workers, or any
169 worker aggrieved by a violation of any provision of sections 1 to 3,
170 inclusive, of this act, may bring a civil action in the Superior Court for
171 any and all relief provided in this section.

172 (e) If a court or an arbitrator determines that a covenant not to
173 compete or an exclusivity agreement violates any provision of sections
174 1 to 3, inclusive, of this act, the violator shall be liable for the greater of
175 (1) the aggrieved worker's actual damages, or (2) a penalty of five
176 thousand dollars, in addition to reasonable attorney's fees, expenses and
177 court costs.

178 (f) Notwithstanding section 31-69a of the general statutes, no
179 employer, officer, agent or other person who violates any provision of
180 this section shall be liable to the Labor Department for a civil penalty.

181 Sec. 5. Section 31-50a of the general statutes is repealed and the
182 following is substituted in lieu thereof (*Effective July 1, 2022*):

183 (a) No employer may require any person employed in the
184 classification 339032 of the standard occupational classification system
185 of the Bureau of Labor Statistics of the United States Department of
186 Labor to enter into an agreement prohibiting such person from engaging
187 in the same or a similar job, at the same location at which the employer
188 employs such person, for another employer or as a self-employed
189 person, unless the employer proves that such person has obtained trade
190 secrets, as defined in subsection (d) of section 35-51, of the employer.

191 (b) (1) Any person who is aggrieved by a violation of this section may
192 bring a civil action in the Superior Court to recover damages and for
193 such injunctive and equitable relief as the court deems appropriate.

194 (2) The Labor Commissioner may request the Attorney General to
195 bring an action in the superior court for the judicial district of Hartford
196 for restitution on behalf of any person injured by any violation of this
197 section and for such injunctive or equitable relief as the court deems
198 appropriate.

199 (c) The provisions of this section shall apply to agreements entered
200 into, renewed or extended on or after October 1, 2007, and before July 1,
201 2022.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>July 1, 2022</i>	New section
Sec. 2	<i>July 1, 2022</i>	New section
Sec. 3	<i>July 1, 2022</i>	New section
Sec. 4	<i>July 1, 2022</i>	New section
Sec. 5	<i>July 1, 2022</i>	31-50a

Statement of Purpose:

To set certain requirements for covenants not to compete and exclusivity agreements.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]