

Clock is Ticking on New York's Non-Compete-Ban Bill

A photograph of a modern building's curved glass facade, showing multiple stories with windows, set against a light blue sky.

2 MIN READ

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While many in the antitrust community have been focused on the FTC's proposed ban of non-competes, the states also have been active in this area. Earlier this year, the New York legislature passed a broad non-compete ban, which has been awaiting Governor Hochul's approval for several months. Governor Hochul had expressed support for a non-compete ban applicable to workers who earn below the state median wage. But the bill awaiting her approval is not so limited.

The Governor has until the end of the year to approve the bill or not. Or the bill may be sent back to the legislature with chapter amendments, as suggested by the article linked below. It would not be surprising if the Governor tries to narrow the scope of the ban, e.g. to cover only workers who earn below the state median wage and possibly to include an M&A exception (about which more below). Time will tell.

Because the ban proposed in the current bill would be effective 30 days following the Governor's approval, it is prudent for companies with employees in New York to be prepared to comply on short notice.

The non-compete ban in the current NY bill is both broad, and also vague in some respects, including the following:

- *M&A Non-Competes*: The bill is silent about non-competes attendant to sales of businesses (i.e. M&A), which even other bans have permitted. There are good arguments that such non-competes are appropriate, but the current bill unfortunately is silent on the topic.
- *Paid Garden Leave*: The bill also is silent as to whether paid non-compete periods such as garden-leave arrangements would be lawful.
- *Carve Out to Protect Trade Secrets*: The ban contains a few limited exceptions, including allowing for protection of trade secrets and confidential client information, as well as client non-solicit agreements. But under the bill, even these exceptions must not otherwise restrict competition in violation of the section. Even with the ambiguity, these exceptions should be strongly considered by employers.

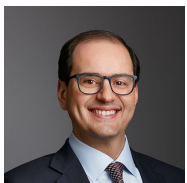
The law on non-competes is evolving and varied, making compliance challenging. Looking beyond New York, several states also have enacted differing versions of non-compete bans, including California, Minnesota, North Dakota, and Oklahoma. And of course earlier this year the FTC proposed a sweeping non-compete ban – as discussed in this [Axinn Insight](#) – that, unlike the NY bill, applies retroactively as well. The FTC received nearly 27,000 comments on the draft rule and is expected to vote on a final version of the proposal in April 2024. If the final rule is anything like the proposed rule, it is likely to face significant legal challenges as noted in the *Axinn Insight*, meaning continued turbulence in this important area for employers and workers alike.

New York’s proposed law to ban non-competes is not expected to come into force without chapter amendments to address various issues, including sector-specific exceptions or buyer protection provisions for M&A transactions.

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