



**LAWSON & WEITZEN, LLP**  
ATTORNEYS AT LAW

*A full service law firm representing businesses and individuals in Massachusetts and throughout the country.*

## **Massachusetts has a new noncompete law. Is your business ready?**

**John Bauer, Partner, Lawson & Weitzen, LLP**

On August 10, 2018, after almost ten years of legislative efforts, Massachusetts Governor Charlie Baker signed a new law governing the enforcement of employee noncompetition agreements in the Commonwealth that will significantly impact the enforcement of noncompete agreements in Massachusetts.

The new law, Mass. Gen. Law c. 149, § 24L, applies only to employee and independent contractor noncompete agreements signed on or after October 1, 2018. Noncompete agreements signed before that date will not be affected. However, noncompete agreements signed on or after October 1, 2018 that do not comply with the new law will be unenforceable. Because of the multiple changes in the law, it is almost certain that if you do not revise your existing form employee noncompete agreements, you will be unable to enforce the agreements against those employees who sign them on or after October 1, 2018. Here's what you need to know:

- **The agreement must be signed by you and the employee, and must indicate the employee had the right the counsel.** To be enforceable under the new law, a noncompete must be in writing, signed by you and the employee, and must state that the employee had the right to consult with an attorney before signing. An agreement that does not contain a statement that the employee had the right to consult with counsel before signing the agreement will not be enforceable.
- **You must give the employee notice that a noncompete is a condition of employment.** A noncompete agreement signed in connection with the start of employment is enforceable only if you provide a copy to the employee either before you make a formal employment offer or ten (10) business days before the employee starts working, whichever comes first. A noncompete agreement signed **after** the employee begins working for you is enforceable only if you give the employee "notice" of the agreement not less than ten (10) days before the agreement becomes effective.
- **A noncompete that is longer than one year may not be enforceable.** The new law provides that a noncompete is enforceable only if the stated restricted period is one year or less. However, the new law also permits courts to "reform" or rewrite agreements where the duration of the restriction is too long. Also, in some circumstances, courts are still permitted to enforce noncompetes for longer than one year. We have suggestions and can assist you in drafting or revising your employee noncompetes.
- **You must compensate an employee for a noncompete if the employee signs the agreement after starting work for you.** A noncompete that the employee signs after the commencement of employment is enforceable only if you provide "fair and reasonable consideration independent from the continuation of employment." That is, you must provide the employee with more than just a job, or the noncompete will not be enforceable. The law does not define "fair and reasonable consideration." However, we can discuss with you some reasonable options for satisfying this new requirement.

- The new law requires that you provide the employee with “garden leave” or “other mutually agreed-upon consideration.” Under the new law, a noncompete is enforceable only if you agree to pay the employee “garden leave” during the period of restriction or you provide some other mutually-agreed upon consideration. “Garden leave” essentially amounts to half the employee’s annualized salary within the last two years. “Garden leave” is not an attractive option for employers and the better option is to provide “other mutually-agreed upon consideration.” Although the new law does not define what “other mutually-agreed upon consideration” requires, we have some clear ideas on what kinds of “consideration” will satisfy this new provision in the law.
- Noncompetes with certain classes of employees are now automatically unenforceable. Under the new law, noncompetes are not enforceable against the following: employees terminated without cause or laid off; employees classified as “nonexempt” under the Fair Labor Standards Act; full-time undergraduate or graduate students partaking in an internship or short-term employment; and employees who are 18 or younger. We can discuss with you which of your employees you may require to sign a noncompete and which you may not.

If you use or plan to use employee (or independent contractor) noncompetes to protect your trade secrets, confidential information, and goodwill, you will need to comply with the new law. Please do not hesitate to contact Lawson & Weitzen, LLP to advise you concerning all the requirements of the new law, including any effect on other standard terms such as nonsolicitation and nonrecruitment clauses.



## LAWSON & WEITZEN, LLP

ATTORNEYS AT LAW

88 Black Falcon Avenue, Suite 345

Boston, Massachusetts 02210

(617) 439-4990

[Lawson-Weitzen.com](http://Lawson-Weitzen.com)

---

*John Bauer is a Partner at Lawson & Weitzen, LLP focusing his practice on business law with a specialty in employment noncompete agreements representing both employers and employees.*

*John teaches trade secret and noncompete law at Suffolk University Law School and is a frequent commentator on noncompete law. He was a resource for legislative leaders and others who drafted the new law. John can be reached by email at [JBauer@Lawson-Weitzen.com](mailto:JBauer@Lawson-Weitzen.com).*

*Lawson & Weitzen, LLP is a full service law firm that prides itself in offering timely, effective, and quality services at fair and affordable fees to businesses and individuals.*

This alert does not constitute legal advice. Nothing in this alert shall create or constitute a lawyer-client relationship with Lawson & Weitzen, LLP or any of its attorneys. This alert may constitute attorney advertising.