Uniform Restrictive Employment Agreement Act*

Drafted by the

Uniform Law Commission

and by it

Approved and Recommended for Enactment
in All the States

at its

Meeting in Its One-Hundred-and-Thirtieth Year
Madison, Wisconsin
July 9 – 15, 2021

Without Prefatory Note and Comments

July 12, 2021

**The following text is subject to revision by the Committee on Style of the National Conference of Commissioners on Uniform State Laws.*

Uniform Restrictive Employment Agreement Act

Section 1. Title

This [act] may be cited as the Uniform Restrictive Employment Agreement Act.

Section 2. Definitions

In this [act]:

(1) "Confidentiality agreement" means a restrictive employment agreement that:

(A) prohibits a worker from using or disclosing information; and

(B) is not a condition of settlement or other resolution of a dispute.

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) "Employer" means a person that hires or contracts with a worker.

(4) "No-business agreement" means a restrictive employment agreement that prohibits a worker from working for a client or customer of the employer.

(5) "Noncompete agreement" means a restrictive employment agreement that prohibits a worker from working elsewhere. The term does not include a no-business agreement.

(6) "Nonsolicitation agreement" means a restrictive employment agreement that prohibits a worker from soliciting a client or customer of the employer.

(7) "No-recruit agreement" means a restrictive employment agreement that prohibits a worker from hiring or recruiting another worker of the employer.

(8) "Payment-for-competition agreement" means a restrictive employment agreement that imposes an adverse financial consequence on a worker for working elsewhere but does not expressly prohibit the work.

(9) "Person" means an individual, estate, business or nonprofit entity, or other

legal entity. The term does not include a public corporation or government or governmental subdivision, agency, or instrumentality.

(10) "Record" means information:

(A) inscribed on a tangible medium; or

(B) stored in an electronic or other medium and retrievable in perceivable form.

(11) "Restrictive employment agreement" means an agreement or part of an agreement between an employer and worker that prohibits, limits, or sets a condition on working elsewhere after the work relationship ends or a sale of a business is consummated. The term includes a noncompete agreement, confidentiality agreement, no-business agreement, nonsolicitation agreement, no-recruit agreement, payment-for-competition agreement, and training-repayment agreement.

(12) "Sale of a business" means sale, merger, consolidation, amalgamation, reorganization, or other transaction, however denominated, of all or part of a for-profit or nonprofit entity or association, or all or part of its assets, or a substantial ownership interest in the entity or association.

(13) "Sign" means, with present intent to authenticate or adopt a record:

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic symbol, sound, or process.

(14) "Special training" means instruction or other education a worker receives from a source other than the employer that is:

(A) designed to enhance the ability of the worker to perform the worker's

work;

(B) not normally received by other workers; and

(C) a significant and identifiable cost to the employer distinct from ordinary on-the-job training.

(15) "Stated rate of pay" means the annual compensation an employer agrees to pay a worker. The term includes a wage, salary, professional fee, other amount paid as compensation for personal service, and the fair market value of all remuneration paid in a medium other than cash. The term does not include a healthcare benefit, severance pay, retirement benefit, expense reimbursement, amount paid as a distribution of earnings and profit unless paid as compensation for personal service, or anticipated but indeterminable compensation including a tip, bonus, or commission.

(16) "Trade secret" has the meaning in [cite to Uniform Trade Secrets Act Section 1(4)].

(17) "Training-repayment agreement" means a restrictive employment agreement that requires a worker to repay the employer for training costs incurred by the employer.

(18) "Work" means providing service.

(19) "Worker" means an individual who works for an employer. The term includes an employee, independent contractor, extern, intern, volunteer, apprentice, sole proprietor who provides service to a customer, and an individual who provides service through an entity. The term does not include an individual, even if the individual performs incidental service for the employer, whose sole relationship with the employer is as a member of a board of directors or other governing or advisory board, or an individual under whose authority the powers of an entity are exercised, or an investor, or a vendor of goods.

Legislative Note: *In paragraph (16), a state should cite to the state's Uniform Trade Secrets Act Section 1(4) or the equivalent definition of trade secret for civil misappropriation.*

Section 3. Scope

(a) This [act] applies to a restrictive employment agreement. If a restrictive employment agreement is part of an agreement, other parts of the agreement are not affected by this [act].

(b) This [act] supersedes common law that applies only to a restrictive employment agreement but does not otherwise affect principles of law and equity consistent with this [act].

(c) This [act] does not affect [cite to other state law or rule that regulates a restrictive employment agreement not inconsistent with this act].

(d) This [act] does not affect an agreement to take an action solely to transfer, perfect, or enforce patent, copyright, trade secret, or other similar rights.

(e) This [act] does not affect a noncompetition obligation arising solely as a result of an existing ownership interest in the business entity.

(f) This [act] does not affect an agreement that requires the worker to forfeit post-termination compensation, such as vacation or retirement benefits, the right to which accrued prior to termination.

Legislative Note: *A state should cite in subsection (c) statutes or rules that impose additional restrictions on a restrictive employment agreement.*

Section 4. Notice Requirements

(a) A restrictive employment agreement is prohibited and unenforceable unless:

(1) the employer provides a copy of the proposed agreement in a record to:

(A) a prospective worker 14 calendar days before the acceptance of work or the commencement of work, whichever is earlier;

(B) a current worker who receives a material increase in compensation 14 calendar days before the increase or the worker accepts a change in job status or responsibilities,

whichever is earlier; or

(C) a departing worker who is given consideration in addition to anything of value to which the worker already is entitled 14 calendar days before the agreement is signed;

(2) with the copy of the proposed agreement provided under paragraph (1), the employer provides the worker in a record a separate notice, in the preferred language of the worker if available, as prescribed by the [State Department of Labor] under subsection (d);

(3) the proposed agreement and the signed agreement clearly specify the information, type of work activity, or extent of competition that the agreement prohibits, limits, or sets conditions on after the work relationship ends;

(4) the agreement is in a record separately signed by the worker and the employer and the employer promptly provides the worker a copy of the executed agreement; and

(5) the employer provides an additional copy of the agreement to the worker not later than 14 calendar days after the worker, in a record, requests a copy, unless the employer when acting reasonably and in good faith is unable to provide the copy within 14 calendar days after the request and the worker is not prejudiced by the delay.

(b) A worker may waive the 14 calendar-day requirement of subsection (a)(1)(A) if the worker receives the signed agreement before accepting work. If the worker waives the requirement, the worker may rescind the employment agreement within 14 calendar days after the worker receives the agreement.

(c) An employer must comply with subsection (a)(5) no more than once during a calendar year.

(d) The [State Department of Labor] shall prescribe the notice the employer provides under subsection (a)(2). The notice must inform the worker of the requirements under this [act]

in language that an average reader can understand, including the requirements of subsection (a) and of Sections 5 through 12, as applicable, and state that this [act] establishes penalties against an employer that enters into a prohibited agreement. The [State Department of Labor] shall make the notice available to employers on its publicly accessible website or in other appropriate ways. The [State Department of Labor] may:

(1) produce a separate notice for each type of restrictive employment agreement; and

(2) translate the notice into languages other than English used by a substantial portion of the state's labor force.

Section 5. Worker Not Subject to Restrictive Employment Agreement

A restrictive employment agreement, other than a confidentiality agreement or training-repayment agreement, is prohibited and unenforceable unless:

(1) when the worker signs the agreement and throughout employment, the worker has a stated rate of pay greater than the annual mean wage of employees in this state as determined by the [State Department of Labor] [U.S. Department of Labor, Bureau of Labor Statistics]; and

(2) the worker:

(A) voluntarily quits without good cause attributable to the employer;

(B) is terminated for substantial misconduct or individual performance-related cause; or

(C) has completed the agreed work or finished the term of the contract.

Legislative Note: *In paragraph (1), a state should choose between the bracketed entities. A state may set the requirement of paragraph (1) at more than the annual mean wage of employees in the state, either for all workers or for certain categories of workers.*

Section 6. Restrictive Employment Agreement

In addition to any other requirement of this [act], a restrictive employment agreement is prohibited and unenforceable unless it is reasonable.

Section 7. Noncompete Agreement

A noncompete agreement is prohibited and unenforceable unless:

(1) the agreement protects any of the following legitimate business interests:

(A) the sale of a business in which the worker is a substantial owner and consents to the sale;

(B) the creation of a business in which the worker is a substantial owner;

(C) a trade secret; or

(D) the employer's ongoing customer relationships;

(2) when the worker signs the agreement and through the time of enforcement, the agreement is narrowly tailored in duration, geographical area, and scope of actual competition to protect an interest under paragraph (1), and the interest cannot be adequately protected by another restrictive employment agreement; and

(3) the prohibition on competition lasts not longer than:

(A) five years after the work relationship ends when protecting an interest under paragraph (1)(A) or (B); or

(B) one year after the work relationship ends when protecting an interest only under paragraph (1)(C) or (D).

Section 8. Confidentiality Agreement

A confidentiality agreement is prohibited and unenforceable unless the agreement allows the worker to use and disclose information that:

(1) arises from the worker's general training, knowledge, skill, or experience

gained on the job or otherwise;

(2) is readily ascertainable to the relevant public; or

(3) is irrelevant to the employer's business.

Section 9. No-Business Agreement

A no-business agreement is prohibited and unenforceable unless the agreement:

(1) applies only to a prospective or ongoing client or customer of the employer with whom the worker had worked personally; and

(2) lasts no longer than six months after the work relationship between employer and worker ends.

Section 10. Nonsolicitation Agreement

A nonsolicitation agreement is prohibited and unenforceable unless the agreement:

(1) applies only to a prospective or ongoing client or customer of the employer with whom the worker had worked personally; and

(2) lasts no longer than one year after the work relationship between employer and worker ends.

Section 11. No-Recruit Agreement

A no-recruit agreement is prohibited and unenforceable unless the agreement:

(1) applies only to a worker currently working for the employer with whom the worker had worked personally; and

(2) lasts no longer than six months after the work relationship between employer and worker ends.

Section 12. Payment-for-Competition Agreement

A payment-for-competition agreement is prohibited and unenforceable unless the

agreement:

(1) imposes a financial consequence that is no greater than the actual competitive harm to the employer caused by the worker; and

(2) lasts no longer than one year after the work relationship between employer and worker ends.

Section 13. Training-Repayment Agreement

A training-repayment agreement is prohibited and unenforceable unless the agreement:

(1) requires repayment only of the cost of special training;

(2) lasts no longer than two years after the special training is completed; and

(3) prorates the repayment for work done during the two-year post-training period.

Section 14. Nonwaivability

Except as provided in Section 4(b), a party to a restrictive employment agreement may not waive a requirement of this [act] or stipulate to a fact to avoid a requirement of this [act], except in the context of resolving an issue in litigation or other dispute resolution.

Section 15. Enforcement and Remedy

Alternative A

(a) The court may not modify a restrictive employment agreement to make the agreement enforceable.

Alternative B

(a) The court may not modify a restrictive employment agreement that restricts a worker beyond a duration imposed under this [act] to make the agreement enforceable. The court may modify an agreement that otherwise violates this [act] only on a finding that the employer

reasonably and in good faith believed the agreement was enforceable under this [act] and only to the minimum extent necessary to protect the employer's interest and render the agreement enforceable.

End of Alternatives

(b) A worker who is a party to a restrictive employment agreement or a subsequent employer that has hired or is considering hiring the worker may seek a declaratory judgment that the agreement is unenforceable.

(c) In addition to other judicial remedies, a court may award statutory damages under subsection (e) and reasonable attorney's fees to a private party that successfully challenges or defends against enforceability of a restrictive employment agreement or proves a violation of this [act].

(d) An employer seeking to enforce a restrictive employment agreement has the burden of proving compliance with this [act].

(e) An employer that enters a restrictive employment agreement that the employer knows or reasonably should know is unenforceable under this [act] commits a civil violation. The [Attorney General] [Department of Labor] may bring an action on behalf of the worker, or the worker may bring a private action, against the employer to enforce this subsection. The court may award statutory damages of not more than $[5,000] per worker per agreement for each violation of this subsection.

Legislative Note: *A state should choose Alternative A or Alternative B for subsection (a). A state should indicate whether the Attorney General, Department of Labor, or other state official has the authority to bring an action under subsection (e).*

Section 16. Choice of Law and Venue

(a) A choice of law provision that applies to a restrictive employment agreement is prohibited and unenforceable unless it requires that a dispute arising under the agreement be

governed by the law of the jurisdiction where the worker primarily works for the employer or, if the work relationship has ended, the jurisdiction where the worker primarily worked when the relationship ended.

(b) A choice of venue provision that applies to a restrictive employment agreement is prohibited and unenforceable unless it requires that a dispute arising under the agreement be decided in a jurisdiction where:

(1) the worker primarily works or, if the work relationship has ended, a jurisdiction where the worker primarily worked when the relationship ended; or

(2) the worker resides at the time of the dispute.

Section 17. Uniformity of Application and Construction

In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among jurisdictions that enact it.

Section 18. Saving Provision

Except as provided in Section 19, this [act] does not affect the validity of a restrictive employment agreement in effect before [the effective date of this [act]].

Section 19. Transitional Provision

Sections 4(a)(5) and 5 apply to a restrictive employment agreement regardless of the date on which the agreement was signed.

[Section 20. Severability

If a provision of this [act] or its application to a worker or employer is held invalid, the invalidity does not affect another provision or application that can be given effect without the invalid provision.]

Legislative Note: *Include this section only if the state lacks a general severability statute or a decision by the highest court of the state adopting a general rule of severability.*

[Section 21. Repeals; Conforming Amendments

(a) . . .

(b) . . .

Legislative Note: *The state should examine its statutes to determine whether conforming revisions are required by provisions of this act relating to a restrictive employment agreement. See Section 3(c).]*

Section 22. Effective Date

This [act] takes effect . . .