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## **WHY YOUR STATE SHOULD ADOPT THE UNIFORM RESTRICTIVE EMPLOYMENT AGREEMENT ACT (2021)**

The Uniform Restrictive Employment Agreement Act provides states with rules for determining when noncompete and other restrictive agreements will be unenforceable. In the past five years, many states have recognized the importance of utilizing legislation to provide workers and employers with clarity for drafting and entering into these agreements. This flurry of legislative activity inspired the ULC to act. After all, with workers moving across state lines at a growing frequency and the increasingly national focus of employers, this is an area of the law that greatly benefits from a uniform approach.

- **The Act promotes economic innovation by limiting the use of over-broad restrictive agreements.** Many credit the rise of Silicon Valley's technological prominence to California's strict policy against enforcing restrictive employment agreements. Indeed, these agreements have the potential to limit innovation by stifling worker creativity and removing the opportunity for workers to work in their most productive setting. The adoption of this act will ignite an American start-up and small business culture. Indeed, some credit the current enforcement of over-broad restrictive employment agreements as a primary reason for the historically low number of new businesses.
- **The Act provides for detailed notice requirements that ensure workers understand what a restrictive employment agreement prohibits.** Many states rely on the common law to regulate restrictive employment agreements, but the common law is not the best vehicle for crafting strict notice requirements. Similarly, states that have enacted an act in this domain have yet to include truly comprehensive notice requirements. This act provides for detailed mechanisms to ensure that workers are aware of the agreements in which they sign, and thus increases their bargaining power and limits the worker from being blindsided by their restrictive employment agreement.
- **The Act provides for penalties if an employer enters into a noncompete or similar agreement with a worker that violates the act.** Even in states where there is a near blanket prohibition on the use of restrictive employment agreements, many employers continue to use such devices. This is in part due to the dearth of consequences. If an agreement is found to violate state law, then it is often merely unenforceable. By providing for additional penalties in the case of such use, this act serves as a stronger deterrent.
- **The Act was drafted by a bipartisan group of experts with the goal of national uniformity.** Both employers and workers benefit from clarity on this issue. Employers want to hire workers away from competitors and worker advocate groups want to see greater mobility in the workforce. Indeed, the contentious nature that is typical of many employment-related types of legislation is

The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.

mostly absent. Experts from all sides of the issue worked together to draft an act that allows restrictive employment agreements that benefit competition and reduces or eliminates those that do not. Furthermore, the drafters of this act understood and considered the consequences of uniformity to workers and employers, both of whom typically operate or will operate across state lines.

- **The Act regulates a wide array of persons and agreements.** While the common law, in theory, can regulate all types of persons and agreements, the various state legislative activity has overall been relatively narrow in scope. This act considers the consequences of a variety of restrictive employment agreement types as well as the diversity of parties that may enter into such agreements and thus attempts to provide a robust framework for determining whether such individual agreements should or should not be enforceable.

For further information about Uniform Restrictive Employment Agreement Act, please contact Legislative Counsel Kari Bearman at (312) 450-6617 or [kbearman@uniformlaws.org](mailto:kbearman@uniformlaws.org).