Uniform Law Commission
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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THE UNIFORM RESTRICTIVE EMPLOYMENT AGREEMENT ACT (2021)

-A Summary-

The Uniform Restrictive Employment Agreement Act regulates restrictive employment agreements, which are agreements that prohibit or limit an employee or other worker from working elsewhere after the work relationship ends. The Act does not regulate what a worker can or cannot do while working for the original employer. Noncompete agreements and other restrictive covenants arise in several typical scenarios. Examples include officers and top managers, researchers and high-tech workers privy to trade secrets, or salespersons who develop customer relationships. Recently, noncompetes are increasingly used to restrain lesser skilled, low-wage employees. Noncompetes and other restrictive employment agreements serve valid purposes in the right circumstances but are too often used in ways that limit worker mobility and hinder economic growth.

The scope of this Act is wide. The most stringent of the restrictive employment agreements is a noncompete, which expressly prohibits the worker from creating, joining, or working for a competing firm upon termination of employment. While noncompete agreements get the most attention, they are part of a family of restrictive agreements that also include nonsolicitation agreements, confidentiality agreements (also known as nondisclosure agreements), payment-for-competition agreements, and training-repayment agreements. All these agreements are covered by this Act. There may be other agreements that fall within the scope of the Act as well.

The Act prohibits restrictive agreements (except confidentiality agreements and training-reimbursement agreements) for low-wage workers, defined as those making less than the state's annual mean wage. Additionally, these agreements are unenforceable if the worker resigns for good cause attributable to the employer or the employer terminates the worker for a reason other than willful misconduct or the end of the project or term.

The Act requires advance notice and other procedural requirements for an enforceable noncompete or other restrictive agreement. An employer must give both general notice of the Act's requirements and bespoke notice of the particular restrictive agreement it is requesting of each employee. This notice enables the worker to fully evaluate how the restrictive employment agreement will affect future work and make a fully informed decision of whether to sign the agreement.

The Act sets maximum durations for restrictive agreements that range from six months to five years and establishes other substantive requirements for valid agreements. To protect the overall public interest in competition and mobility in labor markets, the Act's requirements are mandatory and cannot be waived except under limited circumstances.

The Act prohibits a court from broadly rewriting an overbroad agreement rather than declaring it unenforceable, with two alternatives. Under Alternative A, if the restrictive employment agreement does not comply with the Act, the agreement is prohibited and unenforceable and a court will not enforce the agreement. Alternative B allows judicial reformation if the employer entered the agreement reasonably and in good faith thinking it was enforceable.

The Act creates penalties and enforcement by state departments of labor and private rights of action, to address the chilling effect of unenforceable agreements. Finally, the Act requires that an agreement's choice of venue provision requires that a dispute be decided in the state where the worker primarily works or resides. This gives a worker a realistic opportunity to challenge a restrictive employment agreement that violates this Act.

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