

Major Changes to Massachusetts Law on Non-Compete Agreements

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Non-Compete Agreements are contracts entered into by both employer and employee regarding post-employment activities. The Agreement is used to limit an employee in their future employment options. These limitations may include whether you can leave your current position and immediately work in a competing field or by prohibiting you from taking other employees/customers with you when you leave, all for an agreed upon amount of time.

In October 2018, the newly enacted reform to the Massachusetts Non-Compete law took effect, extending wide benefits to those employees subject to a non-competes, while eliminating non-competes for certain types of employees. First, the law only affects those contracts that were entered into AFTER October 1, 2018 and only affects non-competition agreements and not other forms of restrictive covenants. Additionally, a non-competes that is in effect DURING employment is likewise not affected.

There were several major changes to the law which will affect both business and employees equally. The new law includes the elimination of non-competes for non-exempt hourly employees, thus establishing that qualified salaried employees are the only employees that may be subject to a non-compete. Additionally, a non-compete for a salaried employee cannot extend longer than one year (with a few exceptions) and will not be enforceable if the employee is terminated without cause or is laid off. A new employee must be presented with a non-compete agreement at least ten (10) days prior to their start date or when a formal offer is presented and must be signed by both the employer and employee and contain a clause providing the employee with the right to have counsel review. The last major change and perhaps the most substantial is the inclusion of a “garden leave” provision in all non-compete agreements which provides that an employer must provide the employee with at least 50% of their highest earnings in the last two years or some other form of mutually agreed upon consideration.

If you are considering signing a Non-Compete Agreement or other restrictive covenant before you enter into new employment, it is a wise investment to have this agreement reviewed by a trained professional so that you understand the agreement you are making and its potential impact on your future employment. Likewise, if you have an existing Non-Compete or other restrictive covenant, and you are planning on leaving your employment, having an attorney review this agreement and negotiate a release on your behalf can often be the difference between finding employment in your chosen field or not. The [attorneys](#) at Cohen Cleary, P.C. are well versed in restrictive covenants and have been successful on numerous occasions in renegotiating the agreement or having the agreement nullified.