

# Washington State Enacts a Near—Total Ban on Noncompetition—What Employers Need to Know

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## AUTHORS

James C. Dugan | Andrew Spital | Geri Anne McEvoy | Cara Hunt

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On March 23, 2026, Washington Governor Bob Ferguson signed into law Engrossed Substitute House Bill 1155 (“ESHB 1155” or the “Act”), which will prohibit the enforcement of virtually all non-competition agreements in the state beginning June 30, 2027. The Act represents a dramatic shift from Washington’s current framework, which permits non-competition covenants for higher-paid employees subject to certain procedural safeguards. Under ESHB 1155, non-competition agreements—including those already in effect—will be void and unenforceable. The ban sweeps even more broadly than its predecessor, covering written and oral covenants that directly or indirectly restrain competitive activity, and extending to forfeiture-for-competition and clawback provisions. The retroactive effect of the new ban would require employers to affirmatively notify affected current and certain former employees that their existing noncompetes are unenforceable. This alert summarizes the key provisions of the new law, and highlights important distinctions between the statutes.

### **Current Law: Limited Noncompetes Permitted Under Certain Conditions**

Under current Washington law (RCW 49.62), non-competition covenants are not categorically prohibited, but are subject to significant restrictions. Employers may enforce non-competition restrictions (“NCRs”) only against employees whose compensation meets or exceeds an annually adjusted salary threshold, which is currently \$126,858.83 for employees and \$308,485.43 for independent contractors. NCRs imposed on employees who fall below that threshold are void. In addition, at present, if the NCR is presented to a prospective employee, it must be disclosed in writing no later than the time of the employee’s initial acceptance of the offer of employment. If the NCR is entered into after the commencement of employment, the employer must provide independent consideration. And if the NCR arises at the time of a layoff-related termination, the employer must pay the employee compensation equivalent to the employee’s base salary for the duration of the restricted period. Customer non-solicitation provisions are generally subject to the same restrictions as NCRs, although narrowly tailored limits on soliciting customers whom the employee personally serviced, had material contact with, or learned confidential information about are permitted. Confidentiality agreements and employee non-solicitation covenants are allowed under the current framework.

### **The New Law: A Sweeping Prohibition**

The new law will replace the current measured approach with an outright ban. Effective June 30, 2027, it will generally be unlawful for any employer to enter into or to enforce a non-competition agreement against an employee or independent contractor. Critically, the prohibition is retroactive—it applies not only to agreements entered into on or after the effective date but also to all existing non-competition covenants, rendering them void and unenforceable as of June 30, 2027.

By October 1, 2027, employers must make reasonable efforts to provide written notice to all current and former employees and independent contractors who are subject to a non-competition covenant that is still within its effective time period that the covenant is void and unenforceable. Failure to provide this notice may expose employers to enforcement actions and liability, as set forth below.

### **Effects of ESHB 1155**

#### ***Broad Definition of Non-Competition Agreement***

The Act defines a “non-competition agreement” expansively as “every written or oral covenant, agreement, or contract that prohibits or restrains an employee or independent contractor from engaging in a lawful profession, trade, or business of any kind.” Notably, this definition encompasses agreements that “directly or indirectly” prohibit the acceptance or transaction of business with a customer. “Indirect” restraints could be read to include contractual provisions that do not expressly prohibit competition but effectively discourage it. Employers should carefully review existing agreements—including equity award agreements, deferred compensation plans, and similar arrangements—for provisions that could fall within this broad definition.

***Forfeiture and Clawback Provisions Are Covered***

The Act expressly extends the definition of “non-competition agreement” to include forfeiture-for-competition and clawback provisions. Specifically, the statute covers “any provision in an agreement that threatens, demands, requires, or otherwise effectuates that an individual return, repay, or forfeit any right, benefit, or compensation, as a consequence of the individual engaging in a lawful profession, trade, or business of any kind.” This is a meaningful expansion beyond the current law, as it brings within the scope of the ban a variety of arrangements—including equity-vesting conditions, repayment obligations, and similar “stay-or-pay” mechanisms—that are triggered by post-separation competitive activity.

***Customer Non-Solicitation: A Nuanced Analysis***

The treatment of customer non-solicitation provisions under ESHB 1155 warrants particular attention. The statute’s definition of a non-competition agreement includes provisions that directly or indirectly prohibit the “acceptance or transaction of business with a customer,” which would appear to capture broad customer non-solicitation clauses. However, narrowly tailored restrictions on soliciting customers with whom the employee had a direct relationship—such as customers the employee personally serviced or about whom the employee learned confidential information—appear to remain permissible. Under this language, blanket customer non-solicitation provisions are likely unenforceable, while carefully scoped restrictions tied to specific, demonstrable customer relationships may survive.

***What Stays the Same: Restrictions and Protections That Survive the Ban***

Although the new law fundamentally changes the non-competition landscape, several important features of Washington’s existing restrictive covenant framework remain intact.

Most significantly, confidentiality agreements and employee non-solicitation covenants are expressly excluded from the ban and continue to be enforceable. Therefore, employers may still prohibit departing employees from soliciting or recruiting their former colleagues, and may continue to protect trade secrets and proprietary information through properly drafted confidentiality provisions. The new law also retains an exception for noncompete covenants entered into in connection with the sale of one percent or more of a business. The Act also does not disturb existing requirements around choice of law and jurisdiction. Under current law, NCRs must be subject to Washington law and jurisdiction to be enforceable. Employers with multistate workforces should continue to ensure that any surviving post-employment restrictions, such as confidentiality or employee non-solicitation covenants, comply with Washington’s jurisdictional requirements.

***Covered Persons: Employers, Employees and Independent Contractors***

The Act defines employee as “an employee of an employer who is employed in the business of his or her employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is his or her personal labor for an employer under this chapter whether by way of manual labor or otherwise.” Although one could argue that this definition is

broad enough to encompass partners and LLC members who are also service providers, the statutory language directly ties to an employment or independent contractor relationship, rather than to an ownership or membership interest in an entity. The definition of “employer” is equally expansive, capturing “any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state,” including governmental entities and charitable organizations.

**Enforcement and Remedies**

The Act provides employees and independent contractors with a private right of action to challenge violations. If a court or arbitrator finds that a violation has occurred, the employer must pay the aggrieved individual the greater of actual damages or a statutory penalty of \$5,000, plus reasonable attorneys’ fees, expenses, and costs.

**Key Takeaways for Employers**

Employers with employees or independent contractors in Washington should begin preparing now for the June 30, 2027 effective date. Recommended steps include conducting a comprehensive review of existing agreements—including offer letters, employment agreements, equity plans, and separation agreements—to identify provisions that may constitute prohibited non-competition covenants under the Act’s broad definitions. Employers should also develop a plan for delivering the required written notices by, or before, the October 1, 2027 deadline and should consider revising standard-form agreements going forward to remove or restructure non-competition provisions. Confidentiality agreements, employee non-solicitation covenants, and narrowly tailored customer relationship protections should be evaluated as alternative tools for safeguarding legitimate business interests.

**If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.**

**James C. Dugan**

212 728 8654  
jdugan@willkie.com

**Andrew Spital**

212 728 8756  
aspital@willkie.com

**Geri Anne McEvoy**

212 728 8877  
gmcevoy@willkie.com

**Cara Hunt**

212 728 3611  
chunt@willkie.com



BRUSSELS CHICAGO DALLAS FRANKFURT HAMBURG HOUSTON LONDON LOS ANGELES  
MILAN MUNICH NEW YORK PALO ALTO PARIS ROME SAN FRANCISCO WASHINGTON

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