

Workforce Mobility Act Reintroduced Amid Ongoing State Efforts to Restrict Non-Competes

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Last week, Senators Chris Murphy (D-CT) and Todd Young (R-IN) reintroduced the Workforce Mobility Act, which was previously considered by Congress in 2023. The reintroduction of the bipartisan bill comes against the backdrop of last year's FTC Rule banning non-competes, which was successfully challenged and set aside by a federal court. More recently, state legislatures have enacted legislation limiting, or prohibiting, non-competes.

In the past year, Wyoming passed legislation largely prohibiting non-competes on a going forward basis, joining California, Minnesota, North Dakota, and Oklahoma as jurisdictions where non-competes are largely unenforceable. Arkansas, Louisiana, Maryland, Montana, Pennsylvania, Illinois, Oregon, and Washington have also recently passed laws limiting the enforcement of certain non-competes. In New Jersey and New York, legislation has been introduced, but not yet passed, to eliminate non-competes. Florida, on the other hand, is poised to pass a bill that would strengthen the enforceability of most non-competes.

While text of the 2025 version of the Workforce Mobility Act ("WMA") has not been released, as drafted in 2023, it would prohibit most non-competes on a going forward basis. There would be limited exceptions in the context of selling a business or dissolving a partnership. The WMA would give the FTC authority to enforce the Act and would create a civil cause of action allowing aggrieved individuals to recover damages and attorney's fees. If passed, it remains unclear how this type of federal legislation would interact with the existing statutory and common law of the states.

As new legislation relating to non-competes continues to be considered and enacted, employers and employees must remain aware of the current state of the law that applies, or might apply in the future, to their agreements.