

**Denver Emerging Business
Seminar Series**
Colorado's New Non-Compete Laws

Eric L. Kintner
Elizabeth S. Wylie
July 20, 2022

Restrictive Covenants in Colorado

- What is a restrictive covenant?
- How does existing Colorado law limit the use of restrictive covenants?
- How do the amendments change Colorado law?
- What do businesses have to do to comply with the new law?

What is a Restrictive Covenant?

- Restrictive covenants include
 - Non-competes
 - Non-solicits
 - Customers
- Confidentiality agreements and anti-poaching provisions typically enforced

Permitted uses under current Colorado law

- Restrictive covenants are void unless they fall into one or more statutory exception
 - Protection of trade secrets
 - Managers, executives and their professional staff
 - Training
 - Purchase and sale of business or its assets
- Must be reasonable in duration and geographic scope and no broader than necessary to protect legitimate business interests

Changes to Colorado Law

- The Restrictive Employment Agreements Act (HB 22-1317) amends existing law
 - Removes exception for managers, executives and their professional staff
 - Augments trade secrets exception by limiting use to highly compensated workers (currently defined as workers with an annual salary of at least \$101,250)
 - Explicitly contemplates agreements prohibiting the solicitation of customers
 - enforceable with limitations
 - Explicitly permits restrictive covenants tied to four purposes:
 - For the recovery of training costs
 - Confidentiality agreements
 - Purchase and sale of business or its assets
 - Repayment of a scholarship

Changes to Colorado Law (cont.)

- Adds new requirements and penalties:
 - Notice requirements
 - New enforcement and remedies provisions
 - Criminal penalties:
 - A person who uses force, threats or other means of intimidation to prevent any person from engaging in any lawful occupation at any place the person sees fit commits a Class 2 misdemeanor
 - Mandatory choice of law and choice of venue

How to comply with the Restrictive Employment Agreements Act

Consider the following:

- Review use of restrictive covenants
 - Can continue to rely on restrictive covenants signed before August 10, 2022 IF
 - Enforceable
 - Consider which employees can be subject to non-competes on an ongoing basis
 - Consider whether a non-solicit is adequate
- Draft compliant restrictive covenants for use after August 10, 2022
- Train HR
- Provide notice
- Don't forget to look at handbooks and agreements related to receipt of bonuses.

Questions?

© 2022 Snell & Wilmer L.L.P. All rights reserved. The purpose of this presentation is to provide information on current topics of general interest and nothing herein shall be construed to create, offer, or memorialize the existence of an attorney-client relationship. The content should not be considered legal advice or opinion, because it may not apply to the specific facts of a particular matter. As guidance in areas is constantly changing and evolving, you should consider checking for updated guidance, or consult with legal counsel, before making any decisions. The material in this presentation may not be reproduced, distributed, transmitted, cached or otherwise used, except with the express written consent of Snell & Wilmer.



Eric L. Kintner
Partner | Denver
Tel. 303.634.2071
ekintner@swlaw.com



Elizabeth S. Wylie
Partner | Denver
Tel. 303.634.2105
ewylie@swlaw.com