

H.1 Proposal of Amendment

The Lake Champlain Regional Chamber of Commerce understands that nationally the subject of non-compete agreements being applied in an overly restrictive or inappropriate manner. We appreciate the legislative effort to create statute governing these agreements that exists beyond stare decisis and common law. LCRCC engaged with members, employment attorneys, as well as representatives from other business organizations to develop the below proposal of amendment. This proposal is offered by the Vermont Chamber of Commerce, Vermont Technology Alliance, and the Lake Champlain Regional Chamber of Commerce.

In talking to employers and attorneys about a potential garden leave provision, they noted that they see such a provision increasing the litigation surrounding non-compete agreements. Some employers indicated that these agreements are meant to “keep honest people honest” and employers do not aggressively watch for compliance, however, if these agreements would carry the high price tag associated with garden leave, the employers would want to ensure compliance.

The following Vermont-specific solution would;

1. Codify existing case law so that it may be more easily accessible for Vermont employers and employees
2. Create additional protection for employees around prior notice
3. Limit the application to employees above a particular level of compensation and critical value
4. Build awareness and understanding around appropriate use of these agreements and employee rights

H.1 Strike Short-From All Amendment

As used in this amendment;

- “Business entity” includes any partnership, limited liability company, corporation, cooperative, or mutual benefit enterprise, municipality, state agency, or nonprofit
- “non-compete agreement” includes any agreement that restricts the ability of a person or persons to work in a lawful trade or practice within a defined geography, scope of work, and timeframe after formal employment
- “Vermont average weekly wage” means the most recent average weekly wage for Vermont as calculated by the U.S. Bureau of Labor Statistics.
- “exempt employee” means an employee whose jobs is designated “exempt” under the Fair Labor Standards Act
- “Non-exempt employee” means an employee whose jobs is designated “non-exempt” under the Fair Labor Standards Act
- “Key Employee” – Key employees are individuals whose skills, knowledge, experience or leadership are critical to a business’ continued viability; and should such an employee leave and work for a competitor, it is likely that the or will have a substantial and detrimental impact on the continuity of the business and/or will cause undue financial strain.
- “non-employee” means a person working or involved with an employer for academic credit or internship experience

Section 1 – Requirements for a non-compete agreement to be enforceable

- An agreement not to compete is not valid or enforceable unless it meets the following conditions;
 - The employee is classified as exempt *or* meets the criteria in **Section 2** necessary for a non-exempt employee to
 - Reasonable in time, geography, scope (codified case law)
 - The ability for an employee to be employed in their trade
 - Notice of the agreement must be included in any employment offer associated with commencement of employment, promotion, additional consideration, or significant change in job duties
 - The employee's notice was accompanied by language reaffirming the rights of an employee and advising the employee to consult with an attorney
 - The employee was given 10-days to sign the agreement
- Nothing within this section will prevent alternative agreements not meeting the definition of a non-compete as contained in this statute
- This statute does not apply to agreements entered into before the effective date of this statute
- This statute does not apply to agreements entered into in relation to the sale of a business

Section 2 – requirements for a non-compete to be enforceable with a non-exempt employee

- Non-exempt employees - shall fill all the criteria of **Section 1** and the following
 - The employee's compensation is the equivalent of 1.5 times the state minimum wage
 - The employee makes the criteria of a key employee as defined

Section 3 – employer and employee education

- The legislature directs the Attorney General of the State of Vermont to develop material outlining best practices for employers and employees
- The legislature directs the Department of Labor to develop workplace collateral to educate employees of their rights