



To: House Commerce and Economic Development Committee
From: Wendy Mays, Executive Director, Vermont Association of Broadcasters
Date: Monday, February 3, 2020
Re: Answers to questions you asked Friday 1/31/2020 that I needed to follow up on

Thank you for allowing me to speak during your H.1 hearing this past Friday, January 31, 2020 and for allowing me to answer the questions I couldn't answer on-site via this addendum to my testimony.

Question 1: Representative O'Sullivan asked about legislation in Idaho that adds to the definition of "key employee".

My Answer: Here is the specific language from the Idaho statute: "Key employees" are partially defined as *"those who have gained a high level of inside knowledge, influence, credibility, notoriety, fame, reputation or public persona as a representative or spokesperson of the employer, and as a result, have the ability to harm or threaten an employer's legitimate business interests both during and for a period of time after their employment."*

Question 2: After I stated \$40,000 could be the low end salary for an on-air talent just starting out, Representative Kornheiser stated she is concerned about people making \$20/hour having to sign non-competes.

My Answer: Below is the salary threshold when a non-compete agreement can be used in other states, which as you can see is considerably lower than the \$75,000 proposed in H.1 and is why I am asking for that number to be reduced to \$50,000. Or do it like Idaho, by top percentage of income earners within that business, which makes each business relative to their own industry standards:

Maine: \$49,960

Massachusetts: no threshold

New Hampshire: \$30,160

New York: no threshold

**See page 3 for the actual statute language*

Question 3: Representative Ralph asked for a concrete example of when talent did actually leave a station to its detriment.

My Answer: Thanks to non-compete agreements, talent leaving one station to go to a competing station is very rare. The most well known and remembered example among radio folk is when WIZN-FM's popular morning show "Corm and the Coach" defected to Champ 101.3, the competing Classic Rock station.

Question 4: Representative Ralph asked a question about Public Broadcasting dollars and consolidation in the market and could I speak to that.

My Answer: I was confused about this question when it was first asked because there is no connection between public broadcasting dollars and consolidation. I spoke about consolidation already, but I want to make it very clear, Vermont Public Radio and Vermont PBS, should not be used as examples of your typical radio or television station. VPR and VTPBS both have three revenue sources; federal public broadcasting dollars, which is what Representative Ralph asked about, pledge drives/personal/private donations and underwriting (another form of advertising). Because VPR & VTPBS have three streams of revenue, they have state of the art facilities, larger than average staff and can afford to pay salaries well above the average for the broadcast industry in Vermont. The sixty commercial radio and five commercial television stations operating in Vermont only have one source of revenue and that is advertising, which is being depleted by digital competitors. These commercial stations, which are the majority, receive \$0 in public broadcasting dollars, grants, federal money etc. and it is illegal for commercial stations to solicit donations to pay for their operating costs.

Question 5: Representative O'Sullivan asked at what point in time are most on-air talent asked to sign a non-compete agreement. When they are first hired or after they develop themselves as a personality/build up a following.

My Answer: Because in TV and radio, on-air talent's goal is always to move up to larger markets/cities with larger audiences, it is extremely rare to have a seasoned veteran persona move to Vermont and start at a new station. 25 years ago when WPTZ gave Tom Messner a shot, he wasn't the Tom Messner that is a household name today, he was just a young college grad who they saw potential in. It was the combination of his winning personality and WPTZ's efforts to cultivate his talent and market him as part of their brand that made him into the superstar meteorologist he is today.

After speaking to a number of General Managers, I learned that whether or not a person is asked at the beginning of their employment to sign a non-compete agreement is dependent upon the job they are hired to do. A young adult who is hired to be a reporter or weekend anchor or DJ would likely be asked to sign a non-compete prior to employment. If the person was hired as a production assistant (entry level job) right out of college, they would not be asked to sign a non-compete agreement. But, say all of a sudden a reporter or DJ job became available and they get promoted. Then yes, at that time, they would be asked to sign a non-compete agreement and would also get a salary increase.

I hope I have answered your questions, but if not, I will be in the committee meeting room tomorrow and am happy to go into more detail.

Thank you,



Wendy Mays
Executive Director
Vermont Association of Broadcasters

State Statute on Salary Thresholds for Non-Compete Agreements

Maine:

§ 880. Noncompete agreements

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Federal poverty level" means the nonfarm income official poverty line for an individual, as defined by the federal Office of Management and Budget and revised annually in accordance with the Omnibus Budget Reconciliation Act of 1981, Section 673(2).

B. "Noncompete agreement" means a contract or contract provision that prohibits an employee or prospective employee from working in the same or a similar profession or in a specified geographic area for a certain period of time following termination of employment.

2. Prohibited for certain workers. An employer may not require or permit an employee earning wages at or below 300% of the federal poverty level to enter into a noncompete agreement with the employer.

New Hampshire:

New Section; Protective Legislation; Noncompete Agreements for Low-Wage Employees. Amend RSA 275 by inserting after section 70 the following new section:

275:70-a Noncompete Agreements for Low-Wage Employees Prohibited.

I. In this section:

(a) "Employer" shall have the same meaning as in RSA 279:1, XI.

(b) "Low-wage employee" means an employee who earns an hourly rate less than or equal to 200 percent of the federal minimum wage.

(1) An hourly rate less than or equal to 200 percent of the federal minimum wage; or

(2) An hourly rate less than or equal to 200 percent of the tipped minimum wage pursuant to RSA 279:21.

(c) "Noncompete agreement" means an agreement between an employer and a low-wage employee that restricts such low-wage employee from performing:

(1) Work for another employer for a specified period of time;

(2) Work in a specified geographical area; or

(3) Work for another employer that is similar to such low-wage employee's work for the employer who is a party to the agreement.

II.(a) No employer shall require a low-wage employee to enter into a noncompete agreement.

(b) A noncompete agreement entered into between an employer and a low-wage employee shall be void and unenforceable.

2 Effective Date. This act shall take effect 60 days after its passage.

Massachusetts:

There's nothing in the law that mentions a salary threshold.