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Does New Illinois Law Signify A Third Frontier Of Noncompete State-by-State Variations?

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Recently, Jennifer Cerven wrote on Currents about a new Illinois law that prohibits [non-compete agreements for low wage workers](#), i.e. those making less than \$13/hour. There has been heightened dialogue about such restrictions since the publicity surrounding the Jimmy John's noncompete requirement for some of its sandwich makers. I have [suggested here](#) before that most courts I know would be disinclined to enforce a non-compete with such an employee anyway, though as one parent of a summer camp counselor appropriately pointed out to me after that post, such non-competes can still have a [chilling effect](#) on job mobility. So, we seem to be in a period where this issue is receiving greater legislative attention. As noted numerous times here before, state laws vary with respect to non-competes on two critical issues:

1. If a court finds a non-compete to be [overly broad](#), will it rewrite it, "blue pencil" it, or just throw it out?
2. What [consideration](#) is required in a particular state in order to support a non-compete? For example, will a non-compete signed by a long-term employee who receives nothing of value other than the right to come to work the next day be enforceable?

The answers vary by state, so the question of which state's laws apply is

what determines the outcome of a non-compete dispute.

Most business readers will not be affected by a statute that prohibits the use of non-competes with near-minimum-wage workers. However, while Massachusetts (again) did not pass non-compete-restricting legislation in 2016, a compromise bill passed by one house of its legislature had some interesting provisions. Other than where the employee had engaged in bad acts, a non-compete would be limited to 12 months in duration. Non-competes would be prohibited for non-exempt workers, employees terminated without cause, minors, and undergraduate or student interns – a far broader limitation than that passed in Illinois. A non-compete would also have to notify the employee of the right to consult with counsel and be provided at least 10 business days before employment.

Given the interest in these subjects, it seems that restrictions like that passed in Illinois or that came close in Massachusetts will continue to be proposed in state legislatures, further underscoring the need for employers to stay abreast of developments in many states because, if your contract specifies a particular state's law, you could still find yourself litigating in another state and that state may not observe your choice of law. We will keep you posted.