

EFFECTIVE DATE OF D.C. BAN ON NON-COMPETE AGREEMENTS PUSHED BACK TO APRIL 2022

Mayor Muriel Bowser signed the District of Columbia's "Ban on Non-Compete Agreements Amendment Act of 2020" was signed into law on January 2021. However, implementation of the Act is tied to the District's budget and the Act's effective date was recently pushed back to April 1, 2022 at the earliest.

The Act defines an employee as an "individual who performs work in the District on behalf of an employer and any prospective employee who an employer reasonably anticipates will perform work on behalf of the employer in the District." Stated otherwise, employees working in D.C. are most likely included in this definition. This is wide-reaching and effectively prohibits non-compete agreements for employees at all levels of compensation. If an employer violates this act, the Mayor may assess an administrative penalty between \$350 to \$1,000. Certain provisions, mainly §§ 102 through 103 require a minimum penalty of \$1,000. If an employer continues to violate the act, fines rise to \$3,000 for each affected employee.

Although D.C.'s ban is expansive, it contains exceptions for certain groups of employees. Unpaid volunteers at educational, charitable, religious, or nonprofit organizations are exempt from this bill and may be required to sign a non-compete agreement. Religious clergy and casual babysitters are also exempt. The largest exception, however, is for medical specialists. Medical specialists are defined as individuals who are physicians, hold a medical license, have completed a medical residency, and have total annual compensation of at least \$250,000. Medical specialists may still ask, inform, or complain to the employer, a coworker, their lawyer or agent, or a government entity regarding conduct required or prohibited under this ban. Furthermore, this ban does not apply to confidentiality agreements or valid non-compete agreements dated before the effective date.

While the D.C. Council passed the ban on December 15, 2020 and it was signed into law on January 21, 2021, it's effective date was tied to the District's Fiscal Year 2022 budget and was originally estimated to be March 16, 2021. As of today, the enforceability date is anticipated to be April 1, 2022. As this ban is not retroactive, all valid non-compete agreements entered into before this date will still be effective.