

LABOR & EMPLOYMENT ALERT

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New Jersey Bill Attacks Restrictive Covenants

By: *Jed L. Marcus*

We want to alert you to a new piece of New Jersey legislation just introduced into the assembly that if passed, would ban the enforcement of non-competition, non-solicitation and confidentiality agreements against individuals deemed eligible for unemployment compensation. Assembly Bill No. 3970, which was introduced on April 4, 2013, states:

An unemployed individual found to be eligible for [unemployment benefits] shall not be bound by any covenant, contract, or agreement, entered into with the individual's most recent employer, not to compete, not to disclose, or not to solicit.

The bill, if it became law, would not apply to covenants entered into **before** the law became effective.

This bill, if passed as is, would deal a serious body blow to employers trying to protect their businesses, customer bases, confidential information and trade secrets. Although at first blush, it would seem that the proposed bill affects only employees who are fired, the reality is far different because unemployment compensation law is interpreted very liberally. Employees who would be deemed to have voluntarily resigned in a court of law may nonetheless be considered eligible for unemployment if they left work for "good cause attributable to the work." N.J.S.A. 43:21-5(a). *See Utley v. Board of Review*, 2008 WL 204936 (N.J. May 15, 2008) (an employee who resigned for lack of transportation was entitled to unemployment benefits where the lack of transportation was caused by the employer's work schedule changes.) Second, it creates an irrational nexus between unemployment and the protection of trade secrets. Whether employees are fired or resign should have no bearing on an employer's ability to prevent them from pilfering confidential information or stealing trade secrets.

Anticipating that some form of this bill will pass, we recommend that you review your various agreements and, where appropriate, get employees to sign covenants now, before any change in the law occurs. This might also mean implementing severance provisions or "garden leave" payments that are coextensive with the restrictive period. In the meantime, we will continue to monitor the bill and provide any updates as they become available. Please call us if you have any questions.

For more information about any of the topics covered in this issue of the *Labor & Employment Alert*, please contact:

Jed L. Marcus, Esq.
jmarcus@bressler.com
973-966-9678

Tracey Salmon-Smith, Esq.
tsmith@bressler.com
973-660-4422

Emily J. Bordens, Esq.
ebordens@bressler.com
973-660-4470

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