

## EMPLOYMENT LAW ALERT

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### NON-COMPETES: ARE THEY ON THE FAST TRACK TO EXTINCTION IN MASSACHUSETTS?

Massachusetts Governor Deval Patrick has made news with his push to prohibit non-competition agreements in employment and independent contractor relationships. The Governor recently proposed legislation that would make unlawful any employee or independent contractor agreement that:

...prohibits, impairs, restrains, restricts, or places any condition on a person's ability to seek, engage in or accept any type of employment or independent contractor work, for any period of time after an employment or independent contractor relationship has ended....

As proposed, the legislation is retroactive and would invalidate existing employee and independent contractor non-compete agreements. On the other hand, the bill does not affect non-competes outside of the employment relationship and explicitly *allows* employers to put in place and enforce against employees and independent contractors the following protections:

- ▶ Agreements not to solicit or hire employees or independent contractors of the company;
- ▶ Agreements not to solicit or transact business with customers of the business;
- ▶ Non-disclosure agreements;
- ▶ Non-competes in connection with a business sale, for owners of at least 10% who receive significant consideration for the sale; and
- ▶ No re-hire provisions.

At the same time, the Governor's bill adopts a version of the Uniform Trade Secrets Act that is already law in the great majority of states and would strengthen protections for company trade secrets in Massachusetts by, among other things, allowing claims for "actual or threatened misappropriation."

These non-compete and trade secret provisions are part of more comprehensive legislation proposed by Governor Patrick to promote economic growth.

Although the Governor's bill is in the early stages of the legislative process, his dual goals to prohibit workplace non-competes while increasing protection of trade secrets got a big boost just this week from the Joint Committee on Labor and Workforce Development. It is conceivable that these aspects of the proposed legislation may become law in Massachusetts before the end of the year.

At the State House, the ban on non-competes and adoption of the Uniform Trade Secrets Act endorsed by Governor Patrick are getting fast-tracked for consideration in advance of the remainder of his bill. The Joint Committee on Labor and Workforce Development has been considering various bills banning or partially banning non-compete contracts in employment since 2008. Our sources on Beacon Hill confirmed that the Joint Committee has re-drafted the language of the older bills to match that of Governor Patrick's bill, with respect to both the ban on non-competes and adoption of the Uniform Trade Secrets Act, and that the re-drafted bill has been sent to a second committee for further approval.

The Governor's proposal is consistent with a growing trend in the United States to ban or limit workplace non-compete agreements.

We are following this legislation closely, because it affects so many of our clients. Please stay in touch for further developments, and contact us if you would like to consider alternative approaches to protect your critical business interests while reducing reliance on workplace non-compete agreements.

If you have any questions about this alert, please contact [Gary M. Feldman](#) or [Tamsin R. Kaplan](#) in our [Employment Law Practice](#).

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One Boston Place, Boston, Massachusetts 02108 | phone 617.367.2500 | fax 617.523.6215 | [info@davismalm.com](mailto:info@davismalm.com).  
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