

# Virginia Requires Severance or Other Monetary Payment to Enforce Noncompetes for Discharged Employees

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Effective July 1, 2026, Virginia has amended its noncompete statute to prohibit enforcement of a noncompete against an employee discharged without cause unless the employer provides “severance benefits or other monetary payment.” The amendment – SB 170 – applies to agreements entered into, amended or renewed on or after July 1, 2026, and does not apply retroactively.

## Existing Virginia noncompete law

Virginia currently restricts noncompete agreements for “low-wage employees,” defined as those whose average weekly earnings are below the Commonwealth’s average weekly wage (currently \$1,507 per week, or \$78,364 annually), and, as of July 1, 2025, employees entitled to overtime compensation under the Fair Labor Standards Act (FLSA), regardless of their earnings.

The amendment does not change the statutory definition of a noncompete, which covers any provision that “restrains, prohibits, or otherwise restricts an individual’s ability, following the termination of the individual’s employment, to compete with his former employer.” Notably, the existing law provides that a noncompete does not “restrict an employee from providing a service to a customer or client of the employer if the employee does not initiate contact with or solicit the customer or client.” In a recent case, *Sentry Force Security, LLC v. Barrera*, the Virginia Court of Appeals clarified the scope of this exception, holding that customer nonsolicitation provisions fall outside the statute and remain enforceable against low-wage employees, but that employee nonsolicitation provisions may constitute noncompetes subject to the statute’s restrictions.

## Amended law

SB 170 requires employers to provide “severance benefits or other monetary payments” to enforce a noncompete against an employee discharged without cause. Employers must disclose the severance benefit or other monetary payment at the time the noncompete is executed. Notably, the terms “severance benefits,” “monetary payments” and “cause” are undefined, and the law does not specify a minimum payment amount or form of severance.

The new requirement applies in addition to the existing low-wage threshold restriction. Moreover, because *Sentry* interpreted employee nonsolicitation clauses as constituting noncompetes, and because SB 170 does not alter this framework, employers should also consider whether severance or other monetary payments may be required to enforce employee nonsolicitation provisions.

The amendment also extends the private right of action – previously limited to low-wage employees – to all employees, permitting any employee to now bring a civil action against a former employer that attempts to enforce a noncompete in violation of the statute. An action must be brought within two years of the latest of the date the noncompete was signed, the date the employee learns of the noncompete, the date of termination, or the date the employer takes any step to enforce the noncompete.

Notably, the law does not restrict nondisclosure agreements protecting trade secrets, proprietary information or confidential information. Employers that violate the law are subject to civil penalties of \$10,000 per violation. In addition, employers must post a copy of the statute, or a state-approved summary, alongside other required workplace notices. Failure to post can result in a written warning for the first violation, a penalty of up to \$250 for the second and up to \$1,000 for each subsequent violation.

# Next steps

In advance of the July 1, 2026, effective date, Virginia employers should take the following steps:

- **Review and update noncompete (and nonsolicitation) provisions:** Employers should ensure they include disclosures of any severance or monetary payment that will be provided upon termination, as well as consider providing a definition of “cause” within such agreements.
- **Evaluate termination practices:** Employers should ensure procedures for providing severance or monetary payments are in place, and that employee separations are appropriately recorded and documented as “for cause” or “not for cause.”
- **Review employee classifications:** Employers should review and confirm employee classifications as nonexempt or exempt from the FLSA to mitigate misclassification liability and liability under Virginia’s noncompete law.
- **Update workplace postings:** Employers should update their workplace postings to include the newly required provisions.
- **Train HR and management teams:** Human resources and management teams should be trained on the amended law to ensure they are clear about the law’s restrictions on entering into, enforcing or threatening to enforce a noncompete in violation of the law.

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