Cooley

April 1, 2022

On March 28, 2022, District of Columbia Mayor Muriel Bowser signed the Ban on Non-Compete Agreements Applicability Emergency Amendment Act of 2022, which postpones the effective date of DC's near-total ban on non-compete agreements until October 1, 2022. The DC Council had initially deferred the ban's applicability to April 1, 2022, in order to consider legislative amendments and incorporate comments from a July 2021 public hearing. In March, the DC Council requested a postponement to October 2022 so it could continue to consult DC's business community regarding the impact of the ban and consider additional amendments.

As explained in a February 2021 Cooley alert, the Ban on Non-Compete Agreements Amendment Act of 2020 (DC Law 23-209) will have significant implications for all employers with employees working in DC. The act prohibits the use and enforcement of non-compete agreements with virtually all DC employees outside of the sale of business context. In addition, the act bans anti-moonlighting policies, and requires employers to provide written notice of the act to covered employees within 90 days of its effective date.

Though the act has not been modified since it was originally signed by Bowser in January 2021, we expect the DC Council to consider multiple amendments in advance of the new October 2022 effective date. One proposed amendment clarifies that employers may prevent employees from **using** – not just disclosing – their employer's confidential information during and after employment. (The existing language of the act only uses the word "disclosing," so this amendment would close that potential loophole.) The DC Council also will consider an amendment modifying the anti-moonlighting ban to carve out provisions and policies prohibiting employees from working for another person or organization if it would create a bona fide conflict of interest and cause the employer to operate unethically or violate the law.

As a reminder, the act only restricts those agreements and policies entered into after its effective date. Therefore, employers are permitted to continue to use non-compete agreements (and other policies and agreements prohibited by the act) with employees in DC until at least October 2022.

Next steps for employers

We encourage employers with employees in DC to stay apprised of further developments as the act becomes applicable law. We will continue to monitor the progress of the act, including proposed amendments and guidance on timing from the DC Council.

In the interim, before the act becomes effective, we recommend employers contact the Cooley employment team with any questions regarding how the act will impact their non-compete agreements, employment policies and onboarding practices.

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