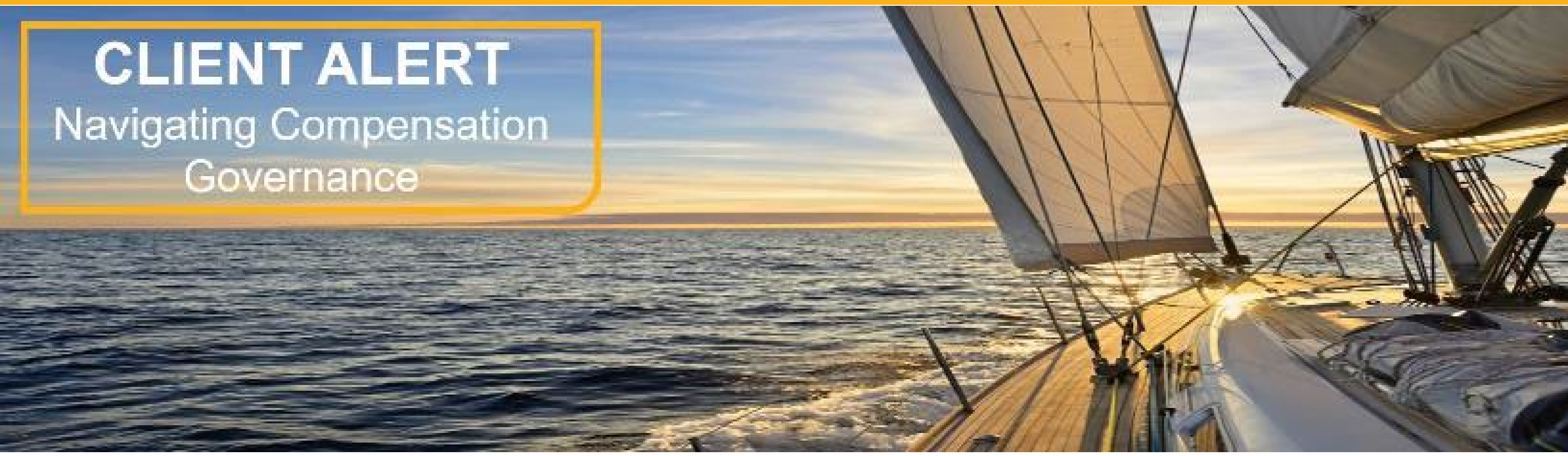
January 8, 2024 Issue 15, Volume 1

MERIDIAN COMPENSATION PARTNERS



Proposed Non-Compete Ban Vetoed In New York, But Watch for Revised Legislation In 2024

New York Governor Hochul rejected a proposed banning non-compete agreements as too broad but signaled a willingness to approve narrower ban on non-compete agreements for lower income workers.

In late December 2023, Governor Kathy Hochul vetoed a bill which would have broadly banned non-compete agreements. The legislation called for a total prohibition, without limitations commonly found in other states, such as a minimum salary threshold or carveout for agreements made in connection with the sale of a business.

Governor Hochul stated that she recognizes a “need to restrict non-compete agreements for middle-class and low-wage workers” and is “open to future legislation that achieves the right balance,” but that “companies have legitimate interests that cannot be met with the Legislation’s one-size-fits-all approach.”

Historically, non-compete agreements have generally been enforced by courts if reasonably tailored to protect legitimate business interests. However, there has been a growing trend to limit or ban non-compete agreements.

Numerous states (including California, Colorado, Oklahoma, North Dakota and Minnesota) have acted in recent years to prohibit or restrict noncompete agreements. At the federal level, the Federal Trade Commission has claimed that non-competes unduly limit worker mobility (particularly for lower-level employees) and suppress wages. Similarly, a memo from the National Labor Relation Board’s General Counsel asserted that certain non-compete provisions in employment agreements violate the National Labor Relations Act.

Before vetoing the legislation, Governor Hochul stated that, to balance the interests of protecting middle- and lower-income workers without driving businesses out of state, she would be willing to support a non-compete ban for employees making under $250,000. While no agreement was reached on the amount of the threshold, or how it would be calculated, it is widely expected that new legislation will be introduced in 2024 which presumably will seek to reach a compromise. If the bill is rewritten, it would need to be approved by the legislature, with changes therefore not likely to take effect before 2025.

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The ***Client Update*** is prepared by Meridian Compensation Partners’ Governance and Regulatory Team led by Donald Kalfen. Questions regarding this Client Update or executive compensation technical issues may be directed to Donald Kalfen at 847-347-2524 or dkalfen@meridiancp.com.