



TOPIC: NON-COMPETE LEGISLATION

Q: What can you tell me about the recent New Mexico Statute about non-compete clauses and does it apply to my contract as an employed physician?

A: Effective July 1, 2015 New Mexico has enacted a new statute that makes unenforceable non-compete clauses in employment contracts for dentists, osteopathic physicians, physicians, podiatrists and certified nurse anesthetists. The statute does not apply to any other providers. In addition the statute only applies to agreements – written contract for employment of a listed health care practitioner – executed after July 1, 2015. If a contract, contract renewal or contract extension is *executed* after July 1, 2015 the new statute applies.

The statute does not apply to contracts with health care practitioners who are shareholders, owners, partners or directors of a health care practice. For employees who are also shareholders, owners, partners or directors of a health care practice, non-compete clauses may still be included in your employment contract and may be enforceable in court. One trade-off about a statute like this one – and since it has limitations in application – courts may interpret this statute as evidence that New Mexico finds certain types of non-compete clause consistent with public policy considerations and may be enforceable, generally.

If you have an employment contract – and you are not shareholder, owners, partner or director of a health care practice - and the contract is executed after July 1, 2015, then any non-compete clause in the contract is not enforceable in court. If you have an employment agreement that was executed before July 1, 2015, or an employment agreement executed before July 1, 2015 that automatically renews or automatically extends for an addition term, say one or two years, then the statute does not apply to your employment contract and a non-compete clause contained in the older contract may be enforceable against you.

If you have an older contract – executed before July 1, 2015 – and it automatically renews or is automatically extended every year or two, then in order to make this statute apply to you, and your employment contract, you must execute a renewal of the contract instead of letting it renew automatically. This may require some discussions or negotiation with your employer. It also requires that the contract extension or contract renewal be *executed after* July 1, 2015 by you (the employee) and by the employer, to make this new statute apply to your contract.

By way of an example, if a listed health care practitioner signed a two (2) year contract on March 1, 2015 and the contract included a non-compete clause, then the provider should honor the non-compete or risk enforcement in court. This provider's non-compete clause may be enforceable in this older employment contract even if the non-compete extends two years past the end of the contract term - until April 30, 2019. If this provider agrees to renew or extend the contract – and the renewal or extension is in writing and executed by the employer and the provider after July 1, 2015 the non-compete is no longer enforceable in court.

A provider is always free to try and negotiate out of a non-compete clause, even if it may be enforceable in court.

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