



NEW YORK STATE SENATOR

Andrew J. Lanza

SENATOR LANZA & A.G. SCHNEIDERMAN PROPOSES NATION'S MOST COMPREHENSIVE BILL TO CURB WIDESPREAD MISUSE OF NON-COMPETE AGREEMENTS

ANDREW J. LANZA October 25, 2016

Bill Bans Harmful Pacts For Low-Wage Workers, Requires Higher Compensation For Workers Who Sign Agreements & Establishes Right To Damages For Unlawful Non-Competes

Senator Lanza joined Attorney General Eric T. Schneiderman Tuesday to announce the introduction of legislation in Albany next year to curb the rampant misuse of non-compete agreements, which depress wages and limit economic mobility by banning workers from employment at a competitor for a mandated period after leaving a job.

Attorney General Schneiderman's announcement follows a Call to Action on Non-Compete Agreements issued Tuesday by the White House as part of the President's initiative to increase economic competition. While growing numbers of states have moved to curtail the misuse of non-competes in recent years, A.G. Schneiderman's bill marks the most comprehensive proposal yet to protect workers from these harmful constraints. The proposal includes a ban on all non-competes for low-wage workers; a requirement that employers offer extra compensation to employees who sign non-competes; and a first-of-its-kind provision granting employees the right to seek liquidated damages when subjected to unlawful non-competes.

“Workers should be able to get a new job and improve their lives without being afraid of being sued by their current or former employer,” said Attorney General Schneiderman. “My proposed bill will protect workers’ rights to seek new and better opportunities, particularly low-wage workers who have been locked into minimum wage jobs due to non-competes. It will also ensure that businesses can hire the best worker for the job.”

A.G. Schneiderman’s proposal builds on a string of settlements earlier this year that banned non-competes at companies including the fast-food chain Jimmy John’s, the legal news site Law360, and the medical services company EMSI. Additional investigations by the A.G’s office are ongoing.

A.G. Schneiderman’s proposed bill:

- Prohibits the use of non-competes for any employee below the salary threshold set by Labor Law Section 190(7), currently \$900 per week;
- Prohibits non-compete agreements that are broader than needed to protect the employer’s trade secrets or confidential information;
- Requires non-compete agreements to be provided to employees before a job offer is extended;
- Requires employers to pay employees additional consideration (money) if they sign non-compete agreements;
- Limits the permissible time duration for non-compete agreements; and
- Creates a private right of action with remedies including liquidated damages for violations.

Non-compete agreements present particular challenges for low-wage and rank-and-file workers, who are increasingly subject to these restrictions. Such workers may be deterred by non-compete agreements from seeking new employment, but may never have the opportunity to meaningfully negotiate such agreements and may lack the means to challenge a non-compete agreement in court.

“Locking an employee into a low-wage or dead-end position through non-compete clauses goes against the principals of the labor movement, the free-market economy and good government policy,” said Senator Diane J. Savino. “As the Senate sponsor of the NY MOVE ACT (Mobility and Opportunity for Vulnerable Employees) which would set regulations on non-compete clauses for low-wage workers, I support the Attorney General’s efforts to protect workers from these career-killing agreements and look forward to working on this issue in the coming legislative session.”

“Attorney General Schneiderman’s leadership and insight is invaluable in being able to get this important reform done, which will make New York more competitive and stimulate the creation of greater economic growth for our citizens,” said Senator Andrew Lanza. “I am currently the author of a bill addressing this issue in the New York State Senate, and I look forward to continued work with the Attorney General in the next session.”

“Requiring low-wage workers to sign non-compete agreements as a condition of employment is a practice that must end immediately,” said Assemblyman Jeffrey Dinowitz, Chair of the Assembly Committee on Consumer Affairs and Protection. “Employers use practices like these to hinder workers’ ability to move up in the world by using their experience to find better paying jobs; this legislation will help remove barriers for those currently stuck in their low-wage jobs so they can work toward a better life for themselves and their families. I introduced legislation in 2015 to address this matter and I am very pleased that the Attorney General is now introducing legislation as well to deal with this very serious issue.”

"Since I first entered the Assembly in 2013, I have carried legislation that parallels forthcoming legislation to be introduced by Attorney General Schneiderman," said Assemblymember Phillip G. Steck. "I look forward to the opportunity to work with our outstanding Attorney General in formulating correct legislation to prevent the abuse of non-compete agreements on unsuspecting job seekers. Under existing law, even when a non-compete is later determined to be illegal, there is nothing to deter an employer from using the threat of litigation based on that contract to intimidate an employee and prevent their future employment in their chosen field."

"NELP commends AG Schneiderman for taking on this important issue," said Christine Owens, executive director of the National Employment Law Project. "Job mobility is one of the best tools for workers to get higher wages and better benefits, and reckless use of non-compete agreements hampers our economy, and the upward mobility of workers who are forced into them as a condition of employment."

"The non-compete legislation proposed by Attorney General Schneiderman is an important step towards ensuring that New York labor markets are competitive and its economy is vibrant," said Evan Starr, Assistant Professor of Management & Organization at the Robert H. Smith School of Business at the University of Maryland. "With a strong ban on non-competes for low-wage workers and a first-of-its-kind damages provision, this legislation fundamentally recognizes that non-competes are strong impediments to a worker's upward mobility and that such restraints should only be allowed in narrow circumstances."

A March 2016 report published by the U.S. Treasury Department found that non-compete agreements cause various harms to "worker welfare, job mobility, business dynamics, and economic growth more generally." A May 2016 report published by the White House concluded that non-compete agreements also depress wages and inhibit innovation. Some states have taken action to combat such agreements: California and Oregon have laws

prohibiting non-compete agreements altogether or sharply limiting their use, and Massachusetts and other states have similar bills pending. Federal lawmakers are also concerned about the severe and unfair restrictions such agreements place on the lowest-paid workers.

Employees who believe they are subject to an unlawful non-compete agreement are encouraged to contact the New York Attorney General's office at 212-416-8700 or noncompete@ag.ny.gov with questions or concerns.

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