

# New Massachusetts Non-Competition Statute

Presented by:

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Do you have employees? Are you planning on hiring in 2019? Then the new Massachusetts non-competition law may have wide ranging implications for you.

The new statute, signed into law by Governor Baker on August 10, 2018, provides restrictions that affect **drafting, implementation, and enforcement of non-competition agreements**.

Understanding this law, and the broad public policy driving it, is critical to establishing and maintaining an effective and enforceable non-competition strategy.

Here is a summary of key provisions of the new law:

- The law became effective October 1, 2018, and only gave employers six (6) weeks to review their procedures and employee documents for compliance. **This means you already must be in compliance with the new law.**
- The law provides that non-competition agreements must meet minimum requirements to be valid and enforceable. Some of the requirements address the following key items:
  - **Eligible Employees:** Employers may not require all employees to sign, and the law prohibits enforcing a non-competition agreement against certain categories of employees (including non-exempt employees).
  - **Consideration:** For non-competition agreements signed after employment has commenced, is there fair and reasonable consideration (understanding that continued employment is insufficient)?
  - **Reasonable Tailoring:** Is there a statutorily protected interest enabling you to enforce a non-competition agreement (e.g. trade secrets)? Is the duration permissible (i.e. less than a year, generally)? Is the geographic scope reasonable? Is the restricted activity reasonable?
  - **“Garden Leave”:** Employers must offer paid “garden leave” for the length of the restricted period, or some other mutually agreed upon consideration which must be specified in the agreement.

The law applies to all agreements signed beginning October 1, 2018. Therefore, it is time to:

- Evaluate your overall non-competition strategy,
- Draft new agreements, and
- Review address existing agreements (since the enforcement of existing agreements may be influenced by the broad public policy driving the new legislation).

*For more information, please contact Nik Schuttauf at (781) 848-5028 or [nschuttauf@sabusinesslaw.com](mailto:nschuttauf@sabusinesslaw.com).*

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