

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH10359-LR-120A

Short Title: Uniform Restrictive Employment Agreement Act. (Public)

Sponsors: Representative Longest.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE UNIFORM RESTRICTIVE EMPLOYMENT AGREEMENT ACT.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. The General Statutes are amended by adding a new Chapter to read:

5 **"Chapter 1H.**

6 **"Uniform Restrictive Employment Agreement Act.**

7 **"§ 1H-1. Title.**

8 This Chapter shall be known and may be cited as the "Uniform Restrictive Employment
9 Agreement Act."

10 **"§ 1H-2. Definitions.**

11 The following definitions apply in this Chapter:

- 12 (1) Confidentiality agreement. – A restrictive employment agreement that:
13 a. Prohibits a worker from using or disclosing information; and
14 b. Is not a condition of settlement or other resolution of a dispute.
15 (2) Electronic. – Relating to technology having electrical, digital, magnetic,
16 wireless, optical, electromagnetic, or similar capabilities.
17 (3) Employer. – A person that hires or contracts with a worker to work or the
18 person.
19 (4) No-business agreement. – A restrictive employment agreement that prohibits
20 a worker from working for a client or customer of the employer.
21 (5) Noncompete agreement. – A restrictive employment agreement that prohibits
22 a worker from working other than for the employer. The term does not include
23 a no-business agreement.
24 (6) Nonsolicitation agreement. – A restrictive employment agreement that
25 prohibits a worker from soliciting a client or customer of the employer.
26 (7) No-recruit agreement. – A restrictive employment agreement that prohibits a
27 worker from hiring or recruiting another worker of the employer.
28 (8) Payment-for-competition agreement. – A restrictive employment agreement
29 that imposes an adverse financial consequence on a worker for working other
30 than for the employer but does not expressly prohibit the work.
31 (9) Person. – An individual, estate, business or nonprofit entity, or other legal
32 entity. The term does not include a public corporation or government or
33 governmental subdivision, agency, or instrumentality.
34 (10) Record. – Information inscribed on a tangible medium, or stored in an
35 electronic or other medium and retrievable in perceivable form.



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- 1 (11) Restrictive employment agreement. – An agreement or part of another
2 agreement between an employer and worker that prohibits, limits, or sets a
3 condition on working other than for the employer after the work relationship
4 ends or a sale of a business is consummated. The term includes a
5 confidentiality agreement, no-business agreement, noncompete agreement,
6 nonsolicitation agreement, no-recruit agreement, payment-for-competition
7 agreement, and training-repayment agreement.
- 8 (12) Sale of a business. – Sale, merger, consolidation, or amalgamation of all or
9 part of a business or nonprofit entity or association, or all or part of its assets,
10 or of a substantial ownership interest in the entity or association.
- 11 (13) Sign. – To, with present intent to authenticate or adopt a record, execute or
12 adopt a tangible symbol, or attach to or logically associate with the record an
13 electronic symbol, sound, or process.
- 14 (14) Signed agreement. – A restrictive employment agreement signed by the
15 worker and employer.
- 16 (15) Special training. – Instruction or other education a worker receives from a
17 source other than the employer that is designed to enhance the ability of the
18 worker to perform the worker's work, is not normally received by other
19 workers, and requires a significant and identifiable expenditure by the
20 employer distinct from ordinary on-the-job training.
- 21 (16) Stated rate of pay. – The compensation, calculated on an annualized basis, an
22 employer agrees to pay a worker. The term includes a wage, salary,
23 professional fee, other compensation for personal service, and the fair market
24 value of all remuneration other than cash. The term does not include:
25 a. A healthcare benefit, severance pay, retirement benefit, or expense
26 reimbursement;
27 b. Distribution of earnings and profit that is not compensation for
28 personal service; or
29 c. Anticipated but indeterminable compensation, including a tip, bonus,
30 or commission.
- 31 (17) Trade secret. – As defined in G.S. 66-152(3).
- 32 (18) Training-repayment agreement. – A restrictive employment agreement that
33 requires a worker to repay the employer for training costs incurred by the
34 employer.
- 35 (19) Work. – Providing service.
- 36 (20) Worker. – An individual who works for an employer. The term includes an
37 employee, independent contractor, extern, intern, volunteer, apprentice, sole
38 proprietor who provides service to a client or customer, and an individual who
39 provides service through a business or nonprofit entity or association. The
40 term does not include an individual, even if the individual performs incidental
41 service for the employer, whose sole relationship with the employer is (i) as a
42 member of a board of directors or other governing or advisory board, (ii) an
43 individual under whose authority the powers of a business or nonprofit entity
44 or association are exercised, (iii) an investor, or (iv) a vendor of goods.

45 **§ 1H-3. Scope.**

46 (a) This Chapter applies to a restrictive employment agreement. If a restrictive
47 employment agreement is part of another agreement, this Chapter does not affect other parts of
48 the other agreement.

49 (b) This Chapter supersedes common law only to the extent that it applies to a restrictive
50 employment agreement but otherwise does not affect principles of law and equity consistent with
51 this Chapter.

1 (c) This Chapter does not affect an agreement to take an action solely to transfer, perfect,
2 or enforce a patent, copyright, trade secret, or similar right.

3 (d) This Chapter does not affect a noncompetition obligation arising solely as a result of
4 an existing ownership interest in a business entity.

5 (e) This Chapter does not affect an agreement that requires a worker to forfeit
6 compensation after the work relationship ends, including vacation or retirement benefits, the right
7 to which accrued before the work relationship ends.

8 **"§ 1H-4. Notice requirements.**

9 (a) Except as provided in subsection (e) of this section, a restrictive employment
10 agreement is prohibited and unenforceable unless:

11 (1) The employer provides a copy of the proposed agreement in a record to:

12 a. Subject to subsection (b) of this section, a prospective worker, at least
13 14 days before the prospective worker accepts work or commences
14 work, whichever is earlier;

15 b. A current worker who receives a material increase in compensation, at
16 least 14 days before the increase or the worker accepts a change in job
17 status or responsibilities, whichever is earlier; or

18 c. A departing worker who is given consideration in addition to anything
19 of value to which the worker already is entitled, at least 14 days before
20 the agreement is required to be signed.

21 (2) With the copy of the proposed agreement provided under subdivision (1) of
22 this subsection, the employer provides the worker in a record the separate
23 notice, in the preferred language of the worker if available, prescribed by the
24 North Carolina Department of Labor under subsection (d) of this section;

25 (3) The proposed agreement and the signed agreement clearly specify the
26 information, type of work activity, or extent of competition that the agreement
27 prohibits, limits, or sets conditions on after the work relationship ends;

28 (4) The agreement is in a record separately signed by the worker and employer
29 and the employer promptly provides the worker a copy of the signed
30 agreement; and

31 (5) Subject to subsection (c) of this section, the employer provides an additional
32 copy of the agreement to the worker, not later than 14 days after the worker,
33 in a record, requests a copy, unless the employer reasonably and in good faith
34 is unable to provide the copy not later than 14 days after the request and the
35 worker is not prejudiced by the delay.

36 (b) A worker may waive the 14-day requirement of subdivision (1) of subsection (a) of
37 this section if the worker receives the signed agreement before beginning work. If the worker
38 waives the requirement, the worker may rescind the entire employment agreement not later than
39 14 days after the worker receives the agreement.

40 (c) An employer is not required under subdivision (5) of subsection (a) of this section to
41 provide an additional copy of the agreement more than once during a calendar year.

42 (d) The North Carolina Department of Labor shall prescribe the notice an employer must
43 provide under subdivision (2) of subsection (a) of this section. The notice must inform the
44 worker, in language an average reader can understand, of the requirements of this Chapter,
45 including the requirements of subsection (a) of this section and G.S. 1H-5 through G.S. 1H-14
46 and state that this Chapter establishes penalties against an employer that enters into a prohibited
47 agreement. The North Carolina Department of Labor shall make the notice available to employers
48 on its publicly accessible website or in other appropriate ways. The North Carolina Department
49 of Labor may produce a separate notice for each type of restrictive employment agreement and
50 translate the notice into languages other than English used by a substantial portion of the State's
51 labor force.

1 (e) This section does not apply to a restrictive employment agreement in connection with
2 the sale of a business of which the worker is a substantial owner and consents to the sale.

3 **"§ 1H-5. Low-wage worker.**

4 A restrictive employment agreement, other than a confidentiality agreement or
5 training-repayment agreement, is:

- 6 (1) Prohibited and unenforceable if, when the worker signs the agreement, the
7 worker has a stated rate of pay less than the annual mean wage of employees
8 in this State as determined by the North Carolina Department of Labor; and
9 (2) Unenforceable if, at any time during the work relationship, the worker's
10 compensation from the employer, calculated on an annualized basis, is less
11 than the annual mean wage of employees in this State as determined by the
12 North Carolina Department of Labor.

13 **"§ 1H-6. Effect of termination of work.**

14 A restrictive employment agreement, other than a confidentiality agreement or
15 training-repayment agreement, is unenforceable if:

- 16 (1) The worker resigns for good cause attributable to the employer; or
17 (2) The employer terminates the worker for a reason other than misconduct or the
18 completion of the agreed work or the term of the contract.

19 **"§ 1H-7. Reasonableness requirement.**

20 A restrictive employment agreement is prohibited and unenforceable unless it is reasonable.

21 **"§ 1H-8. Noncompete agreement.**

22 A noncompete agreement is prohibited and unenforceable unless:

- 23 (1) The agreement protects any of the following legitimate business interests:
24 a. The sale of a business of which the worker is a substantial owner and
25 consents to the sale;
26 b. The creation of a business in which the worker is a substantial owner;
27 c. A trade secret; or
28 d. An ongoing client or customer relationship of the employer.
29 (2) When the worker signs the agreement and through the time of enforcement,
30 the agreement is narrowly tailored in duration, geographical area, and scope
31 of actual competition to protect an interest under subdivision (1) of this
32 section, and the interest cannot be protected adequately by another restrictive
33 employment agreement; and
34 (3) The prohibition on competition lasts not longer than:
35 a. Five years after the work relationship ends when protecting an interest
36 under sub-subdivision a. or b. of subdivision (1) of this section; or
37 b. One year after the work relationship ends when protecting an interest
38 under sub-subdivision c. or d. of subdivision (1) of this section but not
39 an interest under sub-subdivision a. or b. of subdivision (1) of this
40 section.

41 **"§ 1H-9. Confidentiality agreement.**

42 A confidentiality agreement is prohibited and unenforceable unless the worker may use and
43 disclose information that (i) arises from the worker's general training, knowledge, skill, or
44 experience, whether gained on the job or otherwise; (ii) is readily ascertainable to the relevant
45 public; or (iii) is irrelevant to the employer's business.

46 **"§ 1H-10. No-business agreement.**

47 A no-business agreement is prohibited and unenforceable unless the agreement (i) applies
48 only to a prospective or ongoing client or customer of the employer with which the worker had
49 worked personally and (ii) lasts not longer than six months after the work relationship between
50 the employer and worker ends.

51 **"§ 1H-11. Nonsolicitation agreement.**

1 A nonsolicitation agreement is prohibited and unenforceable unless the agreement (i) applies
2 only to a prospective or ongoing client or customer of the employer with which the worker had
3 worked personally and (ii) lasts not longer than one year after the work relationship between the
4 employer and worker ends.

5 **"§ 1H-12. No-recruit agreement.**

6 A no-recruit agreement is prohibited and unenforceable unless the agreement prohibits hiring
7 or recruiting only:

8 (1) Another worker currently working for the employer with whom the worker
9 had worked personally; and

10 (2) Lasts not longer than six months after the work relationship between the
11 employer and worker ends.

12 **"§ 1H-13. Payment-for-competition agreement.**

13 A payment-for-competition agreement is prohibited and unenforceable unless the agreement
14 (i) imposes a financial consequence that is not greater than the actual competitive harm to the
15 employer and (ii) lasts not longer than one year after the work relationship between the employer
16 and worker ends.

17 **"§ 1H-14. Training-repayment agreement.**

18 A training-repayment agreement is prohibited and unenforceable unless the agreement:

19 (1) Requires repayment only of the cost of special training;

20 (2) Lasts not longer than two years after the special training is completed; and

21 (3) Prorates the repayment for work done during the post-training period.

22 **"§ 1H-15. Nonwaivability.**

23 Except as provided in G.S. 1H-4(b) or in the context of resolving an issue in litigation or
24 other dispute resolution, a party to a restrictive employment agreement may not waive a
25 requirement of this Chapter or stipulate to a fact to avoid a requirement of this Chapter.

26 **"§ 1H-16. Enforcement; remedy.**

27 (a) The court may not modify a restrictive employment agreement to make the agreement
28 enforceable.

29 (b) A worker who is a party to a restrictive employment agreement or a subsequent
30 employer that has hired or is considering hiring the worker may seek a declaratory judgment that
31 the agreement is unenforceable.

32 (c) In addition to other judicial remedies, a court may award statutory damages under
33 subsection (e) of this section and in a private action reasonable attorneys' fees to a party that
34 successfully challenges or defends against enforceability of a restrictive employment agreement
35 or proves a violation of this Chapter.

36 (d) An employer seeking to enforce a restrictive employment agreement has the burden
37 of proving compliance with this Chapter.

38 (e) An employer that enters a restrictive employment agreement that the employer knows
39 or reasonably should know is prohibited by this Chapter commits a civil violation. The Attorney
40 General may bring an action on behalf of the worker, or the worker may bring a private action,
41 against the employer to enforce this subsection. The court may award statutory damages of not
42 more than five thousand dollars (\$5,000) per worker per agreement for each violation of this
43 subsection.

44 **"§ 1H-17. Choice of law; venue.**

45 (a) A choice of law provision that applies to a restrictive employment agreement is
46 prohibited and unenforceable unless it requires that a dispute arising under the agreement be
47 governed by the law of the jurisdiction where the worker primarily works for the employer or, if
48 the work relationship has ended, the jurisdiction where the worker primarily worked when the
49 relationship ended.

1 (b) A choice of venue provision that applies to a restrictive employment agreement is
2 prohibited and unenforceable unless it requires that a dispute arising under the agreement be
3 decided in a jurisdiction where:

4 (1) The worker primarily works or, if the work relationship has ended, a
5 jurisdiction where the worker primarily worked when the relationship ended;

6 or

7 (2) The worker resides at the time of the dispute.

8 **"§ 1H-18. Uniformity of application; construction.**

9 In applying and construing this Chapter, a court shall consider the promotion of uniformity
10 of the law among jurisdictions that enact it.

11 **"§ 1H-19. Savings provision.**

12 Except as provided in G.S. 1H-20, this Chapter does not affect the validity of a restrictive
13 employment agreement in effect before the effective date of this Chapter.

14 **"§ 1H-20. Transitional provision.**

15 G.S. 1H-4(a)(4) and (a)(5) apply to a restrictive employment agreement entered into before,
16 on, or after the effective date of this Chapter.

17 **"§ 1H-21. Severability.**

18 If a provision of this Chapter or its application to a worker or employer is held invalid, the
19 invalidity does not affect another provision or application that can be given effect without the
20 invalid provision."

21 **SECTION 2.** This act becomes effective January 1, 2024.