



Employment Law Updates from the Second Quarter of 2023

July 13, 2023

Agenda

1 Wage Transparency
& NDAs

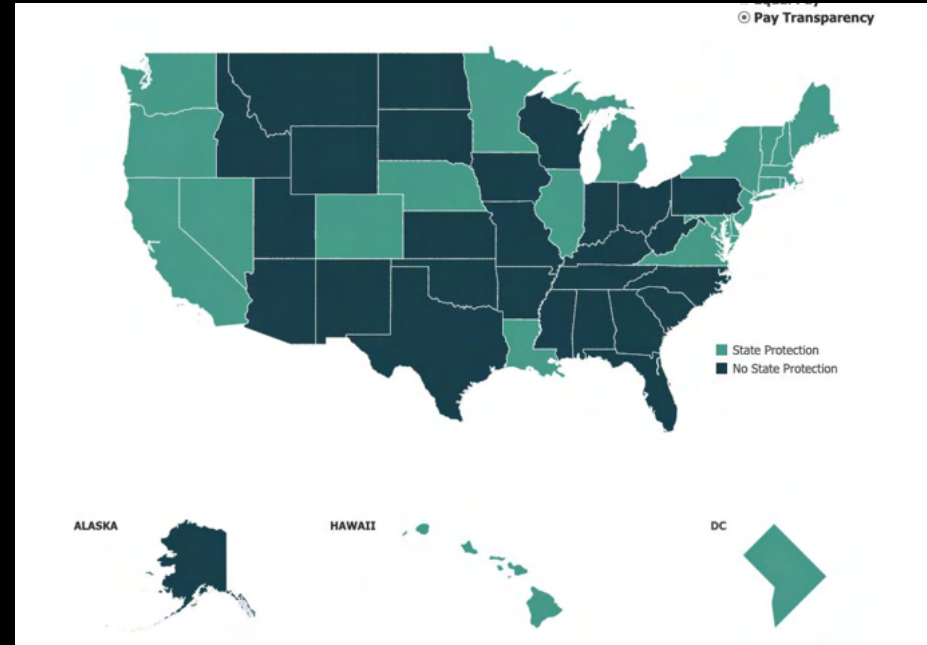
2 Non-Competes

3 Independent
Contractor Test

4 EEO & Pregnant
Worker Protections

Wage Transparency

- According to the US Department of Labor, 22 states (and D.C.) have some type of wage transparency protections.
- Federally, the National Labor Relations Act protects employees' right to discuss their wages.



Updates

Illinois

- If signed by Gov., effective January 1, 2025
- Applies to employers with at least 15 employees
- Job postings must include “good faith” wage range and benefits
- Promotion opportunities must be communicated to employees
- Third-party hiring services must have pay and benefit information

Colorado

- Effective January 1, 2024
- Updated definition of “job opportunity”
- More lenient requirements for employers with at least 15 employees posting remote jobs
- New hires must be made known to coworkers
- Extended recovery period

Hawaii

- Signed July 3, 2023
- Effective January 1, 2024
- Applies to employers with at least 50 employees
- Postings must include hourly rate or salary range that reasonably reflects the actual expected compensation

Federal

- Introduced in the House March 14, 2023
- Would apply to all employers, regardless of employee headcount
- Requires job postings to include good faith wage ranges and benefits
- Wage range must be supplied at time of hire, upon request, and annually

Non-Disclosure Agreements

Colorado

Protecting Opportunities and Workers' Rights ("POWR") Act

- Signed June 6, 2023
- Effective August 7, 2023
- Not retroactive
- Broadens the definition of harassment
- Limits affirmative defenses
- Imposes significant requirements for NDAs covering discrimination or unfair employment practices



Rhode Island

Senate Bill 0342

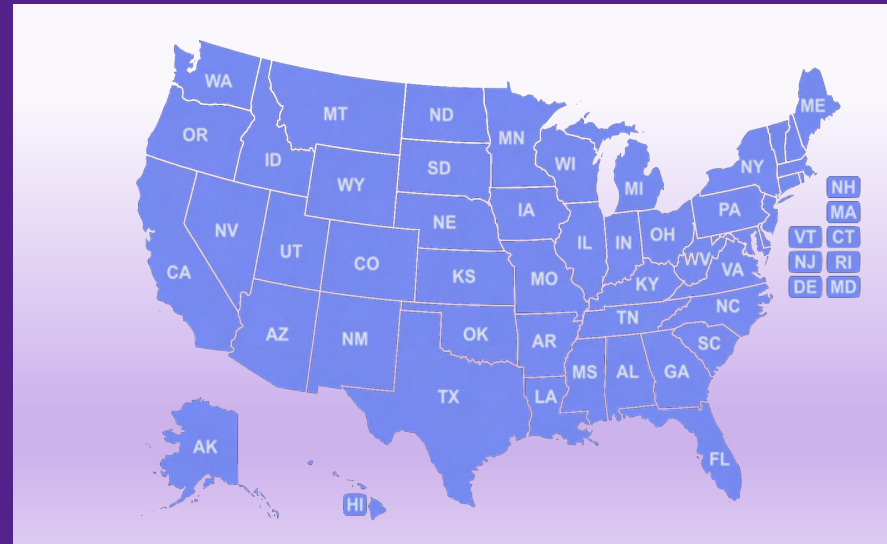
- Signed June 22, 2023
- Effective Immediately
- Prohibits NDAs covering alleged civil rights violations or other unlawful conduct
- Clarifies definition of “confidential”



Current Non-Compete Landscape

Patchwork of state laws:

- Banned in four states
- Wage thresholds in 11 states and D.C.
- All states require non-competes to be reasonable in their limitations.
- 33 states with 84 bills *this year*
- Five bills in Congress



Update on FTC's Proposed Non-Compete Ban

- The rule:
 - Proposes a categorical ban on worker non-compete agreements, with one exception for a sale of business
 - Covers virtually all workers, including independent contractors
 - Applies retroactively to non-competes already signed
 - Imposes strict notice requirements
- The FTC is wading through almost 27,000 comments on the proposed rule. It could be April 2024 before the FTC issues its final rule.
- For more information, see [SixFifty's webinar](#) on the FTC's proposed rule.

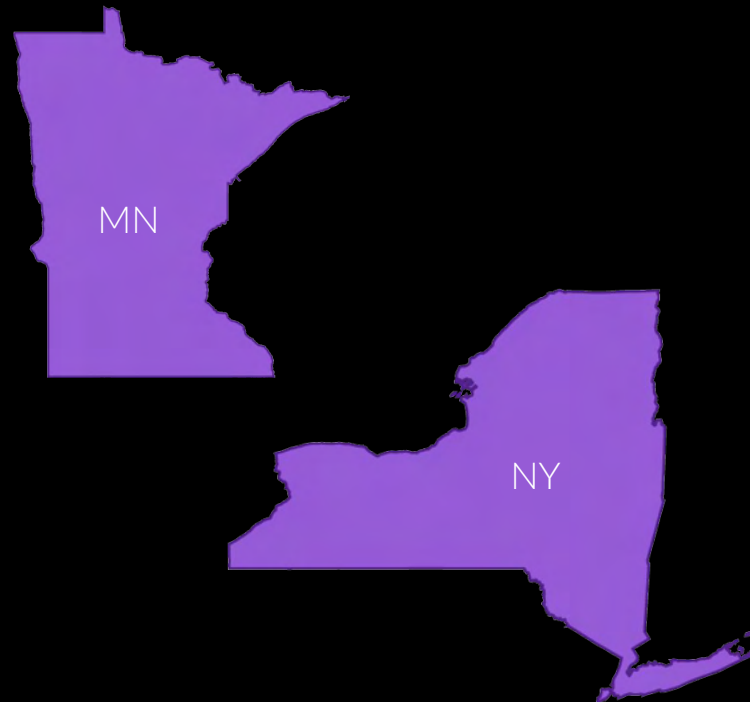
NLRB Joins the Non-Compete Party

- As of May 30, 2023, NLRB will interpret employers' use of non-competes as a violation of the NLRA.
- Non-compete provisions violate the NLRA because they “could reasonably be construed by employees to deny them the ability to quit or change jobs by cutting off their access to other employment opportunities that they are qualified for based on their experience, aptitudes, and preferences as to type and location of work.”
- This opinion isn't a rule, but it is effective immediately, and indicates the NLRB will increase its scrutiny of non-compete agreements, especially those with low- or middle-wage workers.
- Importantly, this does not affect non-competes with supervisory or managerial employees because they aren't protected under the NLRA.



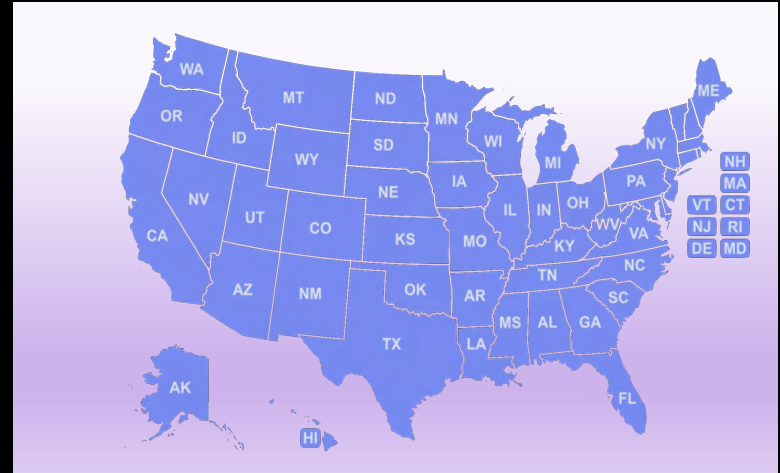
Non-Compete Bans Expand at State Level

- **Minnesota** became first state to completely ban non-competes since 1890
 - Applies to employees and contractors
 - If employee primarily works in MN, MN state law must govern and any dispute has to be heard in MN courts
 - Doesn't apply to non-solicitation agreements, NDAs, or confidentiality agreements
- **New York's** state legislature passed a full non-compete ban. Currently awaiting governor's signature.
 - Doesn't apply to customer non-solicitation, NDAs, or confidentiality agreements
 - No exception for sale of business
- Neither law is retroactive.



More State Non-Compete Regulation

- **Connecticut** - additional restrictions on non-competes with physicians
- **Indiana** - non-competes banned for primary care physicians and new restrictions for other types of physicians
- **Maine** - non-competes banned for veterinarians
- **Maryland** - updated wage threshold beginning Oct. 1
- **Tennessee** - temporary healthcare staffing agencies banned from using non-competes with direct care staff



NLRB Announces New Independent Contractor Test

- The test has been a moving target depending on the administration
 - *Super Shuttle* (2019) - Most important factor is whether worker has entrepreneurial opportunity for gain or loss
 - *Atlanta Opera* (2023) - Overturned *Super Shuttle* and said entrepreneurial opportunity is just one of many factors that must be considered:
 - The extent of control the employer exercises over the details of the work.
 - Whether the work is usually done under the direction of the employer or without supervision.
 - Whether the worker is engaged in a distinct occupation or business.
 - How much skill is required in the particular occupation.
 - Whether the employer supplies the tools and the place of work.
 - The length of time for which the worker is employed.
 - The method of payment, whether by the hour or by the job.
 - Whether the work is a part of the regular business of the employer.

Best Practice:

- Review your employee handbook every month for updates
 - Consider any new laws, states, and employee counts
 - Depending on your company complexity you may need to make many or no changes
 - A little time each month saves you a lot of time down the road
- A lot can change in a month
 - SixFifty Employee Handbook Update for February 2022 →

- **San Francisco**, California passed new military leave requirements which we covered in last month's update. They have now released [FAQ's](#) to help employers calculate and understand the new leave.
- We reviewed the **Delaware** Voting Leave policy and updated it to account for employees working as election official as well as those going to vote. Users with employees in Delaware should consider generating an updated [Voting Leave Policy](#).
- **Minnesota** updated its Human Rights Act to define "race" as including "traits associated with race, including but not limited to hair texture and hair styles such as braids, locs and twists." Minnesota is now the 20th state to pass a CROWN Act law. The [EEO and Anti-Discrimination Policy](#) has been updated to reflect this change.
- **St. Paul**, Minnesota [amended its Sick and Safe Time law](#) to change parts of rollover and frontloading leave. Employers who frontload leave must now provide 48 hours of leave during the employee's first year and 80 hours of leave each subsequent year. Employers may now set their year as either calendar or fiscal, but this must be clearly communicated to employees. Employers who switch from accrual to frontloading or vice-versa are only allowed to do so at the beginning of the year. Employers must carry over unused hours when switching. The amendment also clarified that employees are entitled to leave even if their employer does not have a physical location in the city. The [Sick Leave Policy](#) has been updated accordingly.
- **Bloomington**, Minnesota [amended its upcoming Sick and Safe Time law](#). This amendment includes a new requirement that accrued leave amounts appear on paystubs and allows employers to have employees accrue leave on a pro-rata basis. This law does not go into effect until July 1, 2023. The Employee Handbook will be updated closer to the effective date of the law.

Pregnancy & Lactation Accommodation

Pregnant Workers Fairness Act (PWFA)

- Employers with 15+ employees must make reasonable accommodations related to pregnancy, childbirth, or related medical conditions.

Providing Urgent Maternal Protection for Nursing Mothers Act (PUMP Act)

- Employers must provide lactating employees with reasonable break time and a private location to express milk for up to one year following childbirth
- Employers with less than 50 employees may be exempt if complying would cause “an undue hardship imposing significant difficult or expense.”

New York and Minnesota Expand Lactation Accommodation

- New York now requires a written Lactation Accommodation policy in handbooks.
- Minnesota also added Parental Leave that is immediately available to employees

Protected Characteristics & CROWN Act

Arkansas, Michigan, Minnesota, and Texas
passed CROWN Act Laws (protected hairstyles)

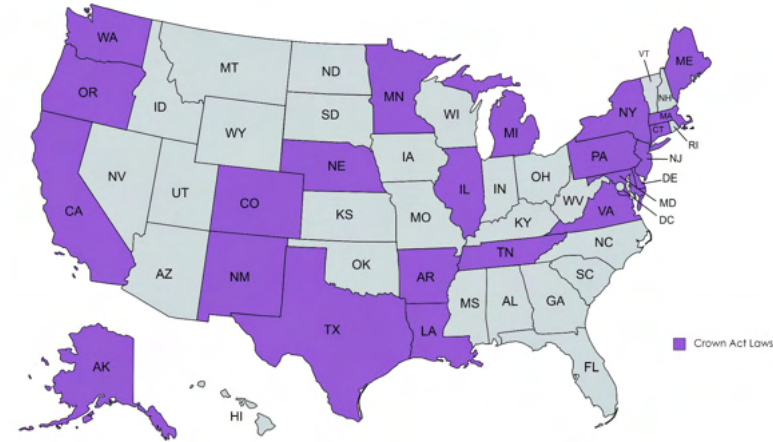
Colorado - Marital Status and POWR Act

New Mexico - Gender and Gender Identity

New York City - Height and Weight

North Dakota - Pregnancy, childbirth, and related medical conditions

Maine - *Removed* Gender Identity and Expression



CROWN Act Law States

(24 states & DC)

Sick Leave Updates

Colorado and Connecticut Expand Uses

CO Sick leave can now be used for bereavement leave, family care, and evacuations.

CT sick leave can now be used for mental wellness days and to assist one's child who is a victim of family violence or sexual assault.

Bloomington, MN newest sick leave

4th locality in Minnesota to require sick leave

Employees who work 80 or more hours within Bloomington

Up to 48 hours of leave per year

Effective July 1, 2023

Minnesota State Earned Sick and Safe Leave

Statewide leave does not replace more strict local rules

Employees who work 80 or more hours in Minnesota

Up to 48 hours of leave per year

Effective January 1, 2024

Thank you!



Scan to see SixFifty's
Employment Tools