

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 HOUSE BILL 3435

By: Osburn

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5
6 AS INTRODUCED

7 An Act relating to contracts; creating the Uniform
8 Restrictive Employment Agreement Act; defining terms;
9 providing scope of act; imposing notice requirements;
10 restricting application for certain wages;
11 restricting application in certain circumstances;
12 imposing reasonableness requirement; providing for
13 noncompete agreements; providing for confidentiality
14 agreements; providing for no-business agreements;
15 providing for nonsolicitation agreements; providing
16 for non-recruit agreements; providing for payment-
17 for-competition agreements; providing for training-
18 repayment agreements; prohibiting certain actions;
19 providing for enforcement; providing remedies;
20 requiring uniformity; creating a savings clause;
21 providing for severability; repealing 15 O.S. 2021,
22 Sections 217, 218, 219, 219A, and 219B, which relate
23 to restraint of trade; providing for codification;
24 and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 225.1 of Title 15, unless there
is created a duplication in numbering, reads as follows:

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

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 225.2 of Title 15, unless there
3 is created a duplication in numbering, reads as follows:

4 As used in this act:

5 1. "Confidentiality agreement" means a restrictive employment
6 agreement that:

7 a. prohibits a worker from using or disclosing
8 information, and

9 b. is not a condition of settlement or other resolution
10 of a dispute;

11 2. "Electronic" means relating to technology having electrical,
12 digital, magnetic, wireless, optical, electromagnetic, or similar
13 capabilities;

14 3. "Employer" means a person that hires or contracts with a
15 worker to work for the person;

16 4. "No-business agreement" means a restrictive employment
17 agreement that prohibits a worker from working for a client or
18 customer of the employer;

19 5. "Noncompete agreement" means a restrictive employment
20 agreement that prohibits a worker from working other than for the
21 employer. The term does not include a no-business agreement;

22 6. "Nonsolicitation agreement" means a restrictive employment
23 agreement that prohibits a worker from soliciting a client or
24 customer of the employer;

1 7. "No-recruit agreement" means a restrictive employment
2 agreement that prohibits a worker from hiring or recruiting another
3 worker of the employer;

4 8. "Payment-for-competition agreement" means a restrictive
5 employment agreement that imposes an adverse financial consequence
6 on a worker for working other than for the employer but does not
7 expressly prohibit the work;

8 9. "Person" means an individual, estate, business or nonprofit
9 entity, or other legal entity. The term does not include a public
10 corporation or government or governmental subdivision, agency, or
11 instrumentality;

12 10. "Record" means information:

- 13 a. inscribed on a tangible medium, or
14 b. stored in an electronic or other medium and
15 retrievable in perceivable form;

16 11. "Restrictive employment agreement" means an agreement or
17 part of another agreement between an employer and worker that
18 prohibits, limits, or sets a condition on working other than for the
19 employer after the work relationship ends or a sale of a business is
20 consummated. The term includes a confidentiality agreement, no-
21 business agreement, noncompete agreement, nonsolicitation agreement,
22 no-recruit agreement, payment-for-competition agreement, and
23 training-repayment agreement;

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1 12. "Sale of a business" means sale, merger, consolidation,
2 amalgamation, reorganization, or other transaction, however
3 denominated, of:

4 a. all or part of a business or nonprofit entity or
5 association, or all or part of its assets, or

6 b. a substantial ownership interest in the business or
7 nonprofit entity or association;

8 13. "Sign" means, with present intent to authenticate or adopt
9 a record:

10 a. to execute or adopt a tangible symbol, or

11 b. to attach to or logically associate with the record an
12 electronic symbol, sound, or process;

13 14. "Signed agreement" means a restrictive employment agreement
14 signed by the worker and employer;

15 15. "Special training" means instruction or other education a
16 worker receives from a source other than the employer that:

17 a. is designed to enhance the ability of the worker to
18 perform his or her work,

19 b. is not normally received by other workers, and

20 c. requires a significant and identifiable expenditure by
21 the employer distinct from ordinary on-the-job
22 training;

23 16. "Stated rate of pay" means the compensation, calculated on
24 an annualized basis, an employer agrees to pay a worker. The term:

1 a. includes a wage, salary, professional fee, other
2 compensation for personal service, and the fair market
3 value of all remuneration other than cash, and

4 b. does not include:

5 (1) a health care benefit, severance pay, retirement
6 benefit, or expense reimbursement,

7 (2) distribution of earnings and profit that is not
8 compensation for personal service, or

9 (3) anticipated but indeterminable compensation,
10 including a tip, bonus, or commission;

11 17. "Trade secret" has the same meaning as that term is defined
12 in paragraph 4 of Section 86 of Title 78 of the Oklahoma Statutes;

13 18. "Training-repayment agreement" means a restrictive
14 employment agreement that requires a worker to repay the employer
15 for training costs incurred by the employer;

16 19. "Work" means providing service; and

17 20. "Worker" means an individual who works for an employer.
18 Worker includes an employee, independent contractor, extern, intern,
19 volunteer, apprentice, sole proprietor who provides service to a
20 client or customer, and an individual who provides service through a
21 business or nonprofit entity or association. Worker does not
22 include an individual, even if the individual performs incidental
23 service for the employer, whose sole relationship with the employer
24 is:

- 1 a. as a member of a board of directors or other governing
- 2 or advisory board,
- 3 b. an individual under whose authority the powers of a
- 4 business or nonprofit entity or association are
- 5 exercised,
- 6 c an investor, or
- 7 d. a vendor of goods.

8 SECTION 3. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 225.3 of Title 15, unless there
10 is created a duplication in numbering, reads as follows:

11 A. This act applies to a restrictive employment agreement. If
12 a restrictive employment agreement is part of another agreement,
13 this act does not affect other parts of the other agreement.

14 B. This act supersedes common law only to the extent that it
15 applies to a restrictive employment agreement but otherwise does not
16 affect principles of law and equity consistent with this act.

17 C. This act does not affect agreements to take an action solely
18 to transfer, perfect, or enforce a patent, copyright, trade secret,
19 or similar right.

20 D. This act does not affect a noncompetition obligation arising
21 solely as a result of an existing ownership interest in a business
22 entity.

23 E. This act does not affect an agreement that requires a worker
24 to forfeit compensation after the work relationship ends, including

1 vacation or retirement benefits, the right to which accrued before
2 the work relationship ended.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 225.4 of Title 15, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Except as provided in subsection E of this section, a
7 restrictive employment agreement is prohibited and unenforceable
8 unless:

9 1. The employer provides a copy of the proposed agreement in a
10 record to:

11 a. subject to subsection B of this section, a prospective
12 worker, at least fourteen (14) days before the
13 prospective worker accepts work or commences work,
14 whichever is earlier,

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

19 c. a departing worker who is given consideration in
20 addition to anything of value to which the worker
21 already is entitled, at least fourteen (14) days
22 before the agreement is required to be signed;

23 2. With the copy of the proposed agreement provided under
24 paragraph 1 of subsection A of this section, the employer provides

1 the worker in a record the separate notice, in the preferred
2 language of the worker if available, prescribed by the Oklahoma
3 Department of Labor under subsection D of this section;

4 3. The proposed agreement and the signed agreement clearly
5 specify the information, type of work activity, or extent of
6 competition that the agreement prohibits, limits, or sets conditions
7 on after the work relationship ends;

8 4. The agreement is in a record separately signed by the worker
9 and employer and the employer promptly provides the worker a copy of
10 the signed agreement; and

11 5. Subject to subsection C of this section, the employer
12 provides an additional copy of the agreement to the worker, not
13 later than fourteen (14) days after the worker, in a record,
14 requests a copy, unless the employer reasonably and in good faith is
15 unable to provide the copy not later than fourteen (14) days after
16 the request and the worker is not prejudiced by the delay.

17 B. A worker may waive the fourteen-day requirement of
18 subparagraph a of paragraph 1 of subsection A of this section if the
19 worker receives the signed agreement before beginning work. If the
20 worker waives the requirement, the worker may rescind the entire
21 employment agreement not later than fourteen (14) days after the
22 worker receives the agreement.

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1 C. An employer is not required under paragraph 5 of subsection
2 A of this section to provide an additional copy of the agreement
3 more than once during a calendar year.

4 D. The Oklahoma Department of Labor shall prescribe the notice
5 an employer must provide under paragraph 2 of subsection A of this
6 section. The notice must inform the worker, in language an average
7 reader can understand, of the requirements of this act, including
8 the requirements of subsection A of this section and Sections 5
9 through 14 of this act, and state that this act establishes
10 penalties against an employer that enters into a prohibited
11 agreement. The Department shall make the notice available to
12 employers on its publicly accessible website or in other appropriate
13 ways. The Department may:

14 1. Produce a separate notice for each type of restrictive
15 employment agreement; and

16 2. Translate the notice into languages other than English used
17 by a substantial portion of the state's labor force.

18 E. This section does not apply to a restrictive employment
19 agreement in connection with the sale of a business of which the
20 worker is a substantial owner and consents to the sale.

21 SECTION 5. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 225.5 of Title 15, unless there
23 is created a duplication in numbering, reads as follows:

1 A restrictive employment agreement, other than a confidentiality
2 agreement or training-repayment agreement, is:

3 1. Prohibited and unenforceable if, when the worker signs the
4 agreement, the worker has a stated rate of pay less than the annual
5 mean wage of employees in this state as determined by the United
6 States Department of Labor; and

7 2. Unenforceable if, at any time during the work relationship,
8 the worker's compensation from the employer, calculated on an
9 annualized basis, is less than the annual mean wage of employees in
10 this state as determined by the United States Department of Labor.

11 SECTION 6. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 225.6 of Title 15, unless there
13 is created a duplication in numbering, reads as follows:

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

16 1. The worker resigns for good cause attributable to the
17 employer; or

18 2. The employer terminates the worker for a reason other than
19 willful misconduct or the completion of the agreed work or the term
20 of the contract.

21 SECTION 7. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 225.7 of Title 15, unless there
23 is created a duplication in numbering, reads as follows:

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

3 SECTION 8. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 225.8 of Title 15, unless there
5 is created a duplication in numbering, reads as follows:

6 A noncompete agreement is prohibited and unenforceable unless:

7 1. The agreement protects any of the following legitimate
8 business interests:

- 9 a. the sale of a business of which the worker is a
10 substantial owner and consents to the sale,
- 11 b. the creation of a business in which the worker is a
12 substantial owner,
- 13 c. a trade secret, or
- 14 d. an ongoing client or customer relationship of the
15 employer;

16 2. When the worker signs the agreement and through the time of
17 enforcement, the agreement is narrowly tailored in duration,
18 geographical area, and scope of actual competition to protect an
19 interest under paragraph 1 of this section, and the interest cannot
20 be protected adequately by another restrictive employment agreement;
21 and

22 3. The prohibition on competition lasts not longer than:
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1 a. five (5) years after the work relationship ends when
2 protecting an interest under subparagraph a or b of
3 paragraph 1 of this section, or

4 b. one (1) year after the work relationship ends when
5 protecting an interest under subparagraph c or d of
6 paragraph 1 of this section but not an interest under
7 subparagraph a or b of paragraph 1 of this section.

8 SECTION 9. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 225.9 of Title 15, unless there
10 is created a duplication in numbering, reads as follows:

11 A confidentiality agreement is prohibited and unenforceable
12 unless the worker may use and disclose information that:

- 13 1. Arises from the worker's general training, knowledge, skill,
14 or experience, whether gained on the job or otherwise;
- 15 2. Is readily ascertainable to the relevant public; or
- 16 3. Is irrelevant to the employer's business.

17 SECTION 10. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 225.10 of Title 15, unless there
19 is created a duplication in numbering, reads as follows:

20 A no-business agreement is prohibited and unenforceable unless
21 the agreement:

- 22 1. Applies only to a prospective or ongoing client or customer
23 of the employer with which the worker had worked personally; and
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1 2. Lasts not longer than six (6) months after the work
2 relationship between the employer and worker ends.

3 SECTION 11. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 225.11 of Title 15, unless there
5 is created a duplication in numbering, reads as follows:

6 A nonsolicitation agreement is prohibited and unenforceable
7 unless the agreement:

8 1. Applies only to a prospective or ongoing client or customer
9 of the employer with which the worker had worked personally; and

10 2. Lasts not longer than one (1) year after the work
11 relationship between the employer and worker ends.

12 SECTION 12. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 225.12 of Title 15, unless there
14 is created a duplication in numbering, reads as follows:

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

17 1. Another worker currently working for the employer with whom
18 the worker had worked personally; and

19 2. Lasts not longer than six (6) months after the work
20 relationship between the employer and worker ends.

21 SECTION 13. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 225.13 of Title 15, unless there
23 is created a duplication in numbering, reads as follows:

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1 A payment-for-competition agreement is prohibited and
2 unenforceable unless the agreement:

3 1. Imposes a financial consequence that is not greater than the
4 actual competitive harm to the employer; and

5 2. Lasts not longer than one (1) year after the work
6 relationship between the employer and worker ends.

7 SECTION 14. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 225.14 of Title 15, unless there
9 is created a duplication in numbering, reads as follows:

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

12 1. Requires repayment only of the cost of special training;

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

15 3. Prorates the repayment for work done during the post-
16 training period.

17 SECTION 15. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 225.15 of Title 15, unless there
19 is created a duplication in numbering, reads as follows:

20 Except as provided in subsection B of Section 4 of this act or
21 in the context of resolving an issue in litigation or other dispute
22 resolution, a party to a restrictive employment agreement may not
23 waive a requirement of this act or stipulate to a fact to avoid a
24 requirement of this act.

1 SECTION 16. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 225.16 of Title 15, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The court may not modify a restrictive employment agreement
5 to make the agreement enforceable.

6 B. A worker who is a party to a restrictive employment
7 agreement or a subsequent employer that has hired or is considering
8 hiring the worker may seek a declaratory judgment that the agreement
9 is unenforceable.

10 C. In addition to other judicial remedies, a court may award
11 damages and in a private action, reasonable attorney fees to a party
12 that successfully challenges or defends against enforceability of a
13 restrictive employment agreement or proves a violation of this act.

14 SECTION 17. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 225.17 of Title 15, unless there
16 is created a duplication in numbering, reads as follows:

17 A. A choice of law provision that applies to a restrictive
18 employment agreement is prohibited and unenforceable unless it
19 requires that a dispute arising under the agreement be governed by
20 the law of the jurisdiction where the worker primarily works for the
21 employer or, if the work relationship has ended, the jurisdiction
22 where the worker primarily worked when the relationship ended.

23 B. A choice of venue provision that applies to a restrictive
24 employment agreement is prohibited and unenforceable unless it

1 requires that a dispute arising under the agreement be decided in a
2 jurisdiction where:

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

6 2. The worker resides at the time of the dispute.

7 SECTION 18. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 225.18 of Title 15, unless there
9 is created a duplication in numbering, reads as follows:

10 In applying and construing this uniform act, a court shall
11 consider the promotion of uniformity of the law among jurisdictions
12 that enact it.

13 SECTION 19. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 225.19 of Title 15, unless there
15 is created a duplication in numbering, reads as follows:

16 Except as provided in Section 20 of this act, this act does not
17 affect the validity of a restrictive employment agreement in effect
18 before the effective date of this act.

19 SECTION 20. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 225.20 of Title 15, unless there
21 is created a duplication in numbering, reads as follows:

22 Paragraph 5 of subsection A of Section 4 of this act and Section
23 5 of this act apply to a restrictive employment agreement entered
24 into before, on, or after effective date of this act.

1 SECTION 21. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 225.21 of Title 15, unless there
3 is created a duplication in numbering, reads as follows:

4 If a provision of this act or its application to a worker or
5 employer is held invalid, the invalidity does not affect another
6 provision or application that can be given effect without the
7 invalid provision.

8 SECTION 22. REPEALER 15 O.S. 2021, Sections 217, 218,
9 219, 219A, and 219B, are hereby repealed.

10 SECTION 23. This act shall become effective November 1, 2022.

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