

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 HOUSE BILL 1799

By: Osburn

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5
6 AS INTRODUCED

7 An Act relating to contracts; enacting the Uniform
8 Restrictive Employment Agreement Act; defining terms;
9 providing for scope of enactment; providing for
10 effect of enactment on common law; providing for
11 effect of enactment with respect to other sources of
12 law; prohibiting certain restrictive employment
13 agreements; providing exceptions; providing for
14 content of certain agreements; authorizing waiver by
15 employees; providing for form of notice; requiring
16 access on website; providing for confidentiality
17 agreements and training-repayment agreements;
18 restriction enforceability of restrictive employment
19 agreements; requiring reasonableness of agreements;
20 prohibiting noncompete agreements; providing
21 exceptions; prohibiting certain confidentiality
22 agreements; prohibiting certain no-business
23 agreements; providing exceptions; prohibiting certain
24 nonsolicitation agreements; providing exceptions;
prohibiting certain no-recruit agreements; providing
exception; prohibiting payment-for-competition
agreements; providing exceptions; prohibiting certain
waivers; limiting authority of courts with respect to
modification of agreements; authorizing declaratory
judgments; authorizing damages; providing for civil
violations; providing for civil action and damages;
providing for effect of choice of law provisions;
providing for effect of choice of venue provisions;
providing for construction of act; providing for
application of enactment to agreements based on
effective date of enactment; providing for effect of
invalidity with respect to provisions of enactment;
providing for codification; and providing an
effective date.

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

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 219-RE1 of Title 15, unless
4 there is created a duplication in numbering, reads as follows:

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

7 SECTION 2. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 219-RE2 of Title 15, unless
9 there is created a duplication in numbering, reads as follows:

10 As used in this act:

11 1. "Confidentiality agreement" means a restrictive employment
12 agreement that:

13 a. prohibits a worker from using or disclosing
14 information, and

15 b. is not a condition of settlement or other resolution
16 of a dispute;

17 2. "Electronic" means relating to technology having electrical,
18 digital, magnetic, wireless, optical, electromagnetic, or similar
19 capabilities;

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

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

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

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

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

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

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

18 10. "Record" means information:

- 19 a. inscribed on a tangible medium, or
20 b. stored in an electronic or other medium and
21 retrievable in perceivable form;

22 11. "Restrictive employment agreement" means an agreement or
23 part of another agreement between an employer and worker that
24 prohibits, limits, or sets a condition on working other than for the

1 employer after the work relationship ends or a sale of a business is
2 consummated. The term includes a confidentiality agreement, no-
3 business agreement, noncompete agreement, nonsolicitation agreement,
4 no-recruit agreement, payment-for-competition agreement, and
5 training-repayment agreement;

6 12. "Sale of a business" means sale, merger, consolidation,
7 amalgamation, reorganization, or other transaction, however
8 denominated, of:

- 9 a. all or part of a business or nonprofit entity or
10 association, or all or part of its assets, or
- 11 b. a substantial ownership interest in the entity or
12 association;

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

- 15 a. execute or adopt a tangible symbol, or
- 16 b. attach to or logically associate with the record an
17 electronic symbol, sound, or process;

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

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

- 22 a. is designed to enhance the ability of the worker to
23 perform the worker's work,
- 24 b. is not normally received by other workers, and

1 c. requires a significant and identifiable expenditure by
2 the employer distinct from ordinary on-the-job
3 training;

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

6 a. includes a wage, salary, professional fee, other
7 compensation for personal service, and the fair market
8 value of all remuneration other than cash, and

9 b. does not include:

10 (1) a health care benefit, severance pay, retirement
11 benefit, or expense reimbursement,

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

14 (3) anticipated but indeterminable compensation,
15 including a tip, bonus, or commission;

16 17. "Trade secret" has the same meaning in the Uniform Trade
17 Secrets Act Section 1(4);

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

21 19. "Work" means providing service;

22 20. "Worker" means an individual who works for an employer.

23 The term:
24

1 a. includes an employee, independent contractor, extern,
2 intern, volunteer, apprentice, sole proprietor who
3 provides service to a client or customer, and an
4 individual who provides service through a business or
5 nonprofit entity or association,

6 b. does not include an individual, even if the individual
7 performs incidental service for the employer, whose
8 sole relationship with the employer is:

9 (1) as a member of a board of directors or other
10 governing or advisory board,

11 (2) an individual under whose authority the powers of
12 a business or nonprofit entity or association are
13 exercised,

14 (3) an investor, or

15 (4) a vendor of goods.

16 SECTION 3. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 219-RE3 of Title 15, unless
18 there is created a duplication in numbering, reads as follows:

19 A. This act applies to a restrictive employment agreement. If
20 a restrictive employment agreement is part of another agreement,
21 this act does not affect other parts of the other agreement.

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

1 C. This act does not affect state law that regulates a
2 restrictive employment agreement not inconsistent with this act.

3 D. This act does not affect an agreement to take an action
4 solely to transfer, perfect, or enforce a patent, copyright, trade
5 secret, or similar right.

6 E. This act does not affect a noncompetition obligation arising
7 solely as a result of an existing ownership interest in a business
8 entity.

9 F. This act does not affect an agreement that requires a worker
10 to forfeit compensation after the work relationship ends, including
11 vacation or retirement benefits, the right to which accrued before
12 the work relationship ends.

13 SECTION 4. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 219-RE4 of Title 15, unless
15 there is created a duplication in numbering, reads as follows:

16 A. Except as provided in subsection E of this section, a
17 restrictive employment agreement is prohibited and unenforceable
18 unless:

19 1. The employer provides a copy of the proposed agreement in a
20 record to:

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

1 b. a current worker who receives a material increase in
2 compensation, at least fourteen (14) days before the
3 increase or the worker accepts a change in job status
4 or responsibilities, whichever is earlier, or

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

9 2. With the copy of the proposed agreement provided under
10 paragraph 1 of this subsection, the employer provides the worker in
11 a record the separate notice, in the preferred language of the
12 worker if available, prescribed by the Department of Labor under
13 subsection D of this section;

14 3. The proposed agreement and the signed agreement clearly
15 specify the information, type of work activity, or extent of
16 competition that the agreement prohibits, limits, or sets conditions
17 on after the work relationship ends;

18 4. The agreement is in a record separately signed by the worker
19 and employer and the employer promptly provides the worker a copy of
20 the signed agreement; and

21 5. Subject to subsection C of this section, the employer
22 provides an additional copy of the agreement to the worker, not
23 later than fourteen (14) days after the worker, in a record,
24 requests a copy, unless the employer reasonably and in good faith is

1 unable to provide the copy not later than fourteen (14) days after
2 the request and the worker is not prejudiced by the delay.

3 B. A worker may waive the fourteen-day requirement of
4 subparagraph a of paragraph 1 of subsection A of this section if the
5 worker receives the signed agreement before beginning work. If the
6 worker waives the requirement, the worker may rescind the entire
7 employment agreement not later than fourteen (14) days after the
8 worker receives the agreement.

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

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

22 1. Produce a separate notice for each type of restrictive
23 employment agreement; and

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

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

6 SECTION 5. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 219-RE5 of Title 15, unless
8 there is created a duplication in numbering, reads as follows:

9 A restrictive employment agreement, other than a confidentiality
10 agreement or training-repayment agreement, is:

11 1. Prohibited and unenforceable if, when the worker signs the
12 agreement, the worker has a stated rate of pay less than the annual
13 mean wage of employees in this state as determined by the
14 Department of Labor; and

15 2. Unenforceable if, at any time during the work relationship,
16 the worker's compensation from the employer, calculated on an
17 annualized basis, is less than the annual mean wage of employees in
18 this state as determined by the Department of Labor.

19 SECTION 6. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 219-RE6 of Title 15, unless
21 there is created a duplication in numbering, reads as follows:

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

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

3 2. The employer terminates the worker for a reason other than
4 gross misconduct or the completion of the agreed work or the term of
5 the contract.

6 SECTION 7. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 219-RE7 of Title 15, unless
8 there is created a duplication in numbering, reads as follows:

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

11 SECTION 8. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 219-RE8 of Title 15, unless
13 there is created a duplication in numbering, reads as follows:

14 A noncompete agreement is prohibited and unenforceable unless:

15 1. The agreement protects any of the following legitimate
16 business interests:

- 17 a. the sale of a business of which the worker is a
- 18 substantial owner and consents to the sale,
- 19 b. the creation of a business in which the worker is a
- 20 substantial owner,
- 21 c. a trade secret, or
- 22 d. an ongoing client or customer relationship of the
- 23 employer;

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

7 3. The prohibition on competition lasts not longer than:

8 a. five (5) years after the work relationship ends when
9 protecting an interest under subparagraph a or b of
10 paragraph 1 of this section, or

11 b. one (1) year after the work relationship ends when
12 protecting an interest under subparagraph c or d of
13 paragraph 1 of this section but not an interest under
14 subparagraph a or b of paragraph 1 of this section.

15 SECTION 9. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 219-RE9 of Title 15, unless
17 there is created a duplication in numbering, reads as follows:

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

20 1. Arises from the worker's general training, knowledge, skill,
21 or experience, whether gained on the job or otherwise;

22 2. Is readily ascertainable to the relevant public; or

23 3. Is irrelevant to the employer's business.
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1 SECTION 10. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 219-RE10 of Title 15, unless
3 there is created a duplication in numbering, reads as follows:

4 A no-business agreement is prohibited and unenforceable unless
5 the agreement:

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

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

10 SECTION 11. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 219-RE11 of Title 15, unless
12 there is created a duplication in numbering, reads as follows:

13 A nonsolicitation agreement is prohibited and unenforceable
14 unless the agreement:

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

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

19 SECTION 12. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 219-RE12 of Title 15, unless
21 there is created a duplication in numbering, reads as follows:

22 A no-recruit agreement is prohibited and unenforceable unless
23 the agreement prohibits hiring or recruiting only:
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1 1. Another worker currently working for the employer with whom
2 the worker had worked personally; and

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

5 SECTION 13. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 219-RE13 of Title 15, unless
7 there is created a duplication in numbering, reads as follows:

8 A payment-for-competition agreement is prohibited and
9 unenforceable unless the agreement:

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

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

14 SECTION 14. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 219-RE14 of Title 15, unless
16 there is created a duplication in numbering, reads as follows:

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

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

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

22 3. Prorates the repayment for work done during the post-
23 training period.

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1 SECTION 15. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 219-RE15 of Title 15, unless
3 there is created a duplication in numbering, reads as follows:

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

9 SECTION 16. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 219-RE16 of Title 15, unless
11 there is created a duplication in numbering, reads as follows:

12 A. The court may not modify a restrictive employment agreement
13 that restricts a worker beyond a period imposed under this act to
14 make the agreement enforceable. The court may modify an agreement
15 that otherwise violates this act only on a finding that the employer
16 reasonably and in good faith believed the agreement was enforceable
17 under this act and only to the extent necessary to protect the
18 employer's interest and render the agreement enforceable.

19 B. A worker who is a party to a restrictive employment
20 agreement or a subsequent employer that has hired or is considering
21 hiring the worker may seek a declaratory judgment that the agreement
22 is unenforceable.

23 C. In addition to other judicial remedies, a court may award
24 statutory damages under subsection E of this section and in a

1 private action reasonable attorney's fees to a party that
2 successfully challenges or defends against enforceability of a
3 restrictive employment agreement or proves a violation of this act.

4 D. An employer seeking to enforce a restrictive employment
5 agreement has the burden of proving compliance with this act.

6 E. An employer that enters a restrictive employment agreement
7 that the employer knows or reasonably should know is prohibited by
8 this act commits a civil violation. The Attorney General may bring
9 an action on behalf of the worker, or the worker may bring a private
10 action, against the employer to enforce this subsection. The court
11 may award statutory damages of not more than Five Thousand Dollars
12 (\$5,000.00) per worker per agreement for each violation of this
13 subsection.

14 SECTION 17. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 219-RE17 of Title 151, unless
16 there 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 219-RE18 of Title 15, unless
9 there 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 219-RE19 of Title 15, unless
15 there 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 219-RE20 of Title 15, unless
21 there 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 the 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 219-RE21 of Title 15, unless
3 there 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. This act shall become effective November 1, 2023.

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