

Effective 5/10/2016

Chapter 51
Post-employment Restrictions Act

Part 1
General Provisions

34-51-101 Title.

This chapter is known as the "Post-Employment Restrictions Act."

Enacted by Chapter 153, 2016 General Session

34-51-102 Definitions.

As used in this chapter:

- (1) "Broadcasting employee" means an employee of a broadcasting company.
- (2) "Broadcasting company" means a person engaged in the business of:
 - (a) distributing or transmitting electronic or electromagnetic signals to the general public using one or more of the following:
 - (i) television;
 - (ii) cable; or
 - (iii) radio; or
 - (b) preparing, developing, or creating one or more programs or messages for distribution or transmission by means described in Subsection (2)(a).
- (3) "Exempt broadcasting employee" means a broadcasting employee who is compensated on a salary basis, as defined in 29 C.F.R. Sec. 541.602, at a rate equal to or greater than the greater of:
 - (a) \$913 per week, or an equivalent amount if calculated for a period longer than one week; or
 - (b) the rate at which an employee qualifies as exempt under the Fair Labor Standards Act, 29 U.S.C. Sec. 213(a) on a salary basis as defined in 29 C.F.R. Part 541.
- (4)
 - (a) "Post-employment restrictive covenant," also known as a "covenant not to compete" or "noncompete agreement," means an agreement, written or oral, between an employer and employee under which the employee agrees that the employee, either alone or as an employee of another person, will not compete with the employer in providing products, processes, or services that are similar to the employer's products, processes, or services.
 - (b) "Post-employment restrictive covenant" does not include nonsolicitation agreements or nondisclosure or confidentiality agreements.
- (5) "Sale of a business" means a transfer of the ownership by sale, acquisition, merger, or other method of the tangible or intangible assets of a business entity, or a division or segment of the business entity.

Amended by Chapter 465, 2018 General Session

Part 2
Scope of Post-employment Restrictions

34-51-201 Post-employment restrictive covenants.

- (1) Except as provided in Subsection (2) and in addition to any requirements imposed under common law, for a post-employment restrictive covenant entered into on or after May 10, 2016, an employer and an employee may not enter into a post-employment restrictive covenant for a period of more than one year from the day on which the employee is no longer employed by the employer. A post-employment restrictive covenant that violates this subsection is void.
- (2)
 - (a) Subject to Subsection (2)(b), a post-employment restrictive covenant between a broadcasting company and a broadcasting employee is valid only if:
 - (i) the broadcasting employee is an exempt broadcasting employee;
 - (ii) the post-employment restrictive covenant is part of a written employment contract of reasonable duration, based on industry standards, the position, the broadcasting employee's experience, geography, and the parties' unique circumstances; and
 - (iii)
 - (A) the broadcasting company terminates the broadcasting employee for cause; or
 - (B) the broadcasting employee breaches the employment contract in a manner that results in the broadcasting employee no longer being employed by the broadcasting company.
 - (b) A post-employment restrictive covenant described in Subsection (2)(a) is enforceable for no longer than the earlier of:
 - (i) one year after the day on which the broadcasting employee is no longer employed by the broadcasting company; or
 - (ii) the day on which the original term of the employment contract containing the post-employment restrictive covenant ends.
 - (c) A post-employment restrictive covenant between a broadcasting company and a broadcasting employee that does not comply with this subsection is void.

Amended by Chapter 132, 2019 General Session

34-51-202 Exceptions.

- (1) This chapter does not prohibit a reasonable severance agreement mutually and freely agreed upon in good faith at or after the time of termination that includes a post-employment restrictive covenant. A severance agreement remains subject to any requirements imposed under common law.
- (2) This chapter does not prohibit a post-employment restrictive covenant related to or arising out of the sale of a business, if the individual subject to the restrictive covenant receives value related to the sale of the business.

Enacted by Chapter 153, 2016 General Session

**Part 3
Remedies**

34-51-301 Award of arbitration costs, attorney fees and court costs, and damages.

If an employer seeks to enforce a post-employment restrictive covenant through arbitration or by filing a civil action and it is determined that the post-employment restrictive covenant is unenforceable, the employer is liable for the employee's:

- (1) costs associated with arbitration;
- (2) attorney fees and court costs; and
- (3) actual damages.

Enacted by Chapter 153, 2016 General Session