

**POST-EMPLOYMENT RESTRICTIONS REVISIONS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Anthony Loubet**

Senate Sponsor: Kirk A. Cullimore

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**LONG TITLE**

**General Description:**

This bill amends the Post-employment Restrictions Act.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ provides that a post-employment restrictive covenant or nonsolicitation agreement related to certain disability services is void; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**34-51-102**, as last amended by Laws of Utah 2018, Chapter 465

**34-51-201**, as last amended by Laws of Utah 2019, Chapter 132

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **34-51-102** is amended to read:

**34-51-102. Definitions.**



28 As used in this chapter:

29 (1) "Broadcasting employee" means an employee of a broadcasting company.

30 (2) "Broadcasting company" means a person engaged in the business of:

31 (a) distributing or transmitting electronic or electromagnetic signals to the general

32 public using one or more of the following:

33 (i) television;

34 (ii) cable; or

35 (iii) radio; or

36 (b) preparing, developing, or creating one or more programs or messages for

37 distribution or transmission by means described in Subsection (2)(a).

38 (3) "Disability" means the same as that term is defined in Section [62A-5-101](#).

39 (4) "Exempt broadcasting employee" means a broadcasting employee who is  
40 compensated on a salary basis, as defined in 29 C.F.R. Sec. 541.602, at a rate equal to or  
41 greater than the greater of:

42 (a) \$913 per week, or an equivalent amount if calculated for a period longer than one  
43 week; or

44 (b) the rate at which an employee qualifies as exempt under the Fair Labor Standards  
45 Act, 29 U.S.C. Sec. 213(a) on a salary basis as defined in 29 C.F.R. Part 541.

46 (5) "Home and community-based service provider" means a person who:

47 (a) provides support, supervision, and assistance to an individual with a disability in a  
48 residential setting, private home, or in the community; and

49 (b) is under contract with the Department of Health and Human Services to provide the  
50 services described in Subsection (5)(a).

51 (6) "Independent contractor restrictive covenant" means an agreement, written or oral,  
52 between an employer and an independent contractor under which the independent contractor  
53 agrees that the independent contractor, either alone or as an employee or independent  
54 contractor of another person, will not compete with the employer in providing products,  
55 processes, or services that are similar to the employer's products, processes, or services.

56 (7) "Nonsolicitation agreement" means an agreement, written or oral, between an  
57 employer and an employee or independent contractor under which the employee or independent  
58 contractor agrees that the employee or independent contractor, either alone or as an employee

59 or independent contractor of another person, will not solicit the employer's employees,  
 60 contractors, or clients.

61 ~~[(4)]~~ (8) (a) "Post-employment restrictive covenant," also known as a "covenant not to  
 62 compete" or "noncompete agreement," means an agreement, written or oral, between an  
 63 employer and employee under which the employee agrees that the employee, either alone or as  
 64 an employee of another person, will not compete with the employer in providing products,  
 65 processes, or services that are similar to the employer's products, processes, or services.

66 (b) "Post-employment restrictive covenant" does not include nonsolicitation  
 67 agreements or nondisclosure or confidentiality agreements.

68 ~~[(5)]~~ (9) "Sale of a business" means a transfer of the ownership by sale, acquisition,  
 69 merger, or other method of the tangible or intangible assets of a business entity, or a division or  
 70 segment of the business entity.

71 Section 2. Section **34-51-201** is amended to read:

72 **34-51-201. Post-employment restrictive covenants -- Nonsolicitation agreements.**

73 (1) (a) Except as provided in ~~[Subsection (2)]~~ Subsections (2) and (3), and in addition  
 74 to any requirements imposed under common law, ~~[for a post-employment restrictive covenant~~  
 75 ~~entered into on or after May 10, 2016,]~~ an employer and an employee may not enter into a  
 76 post-employment restrictive covenant for a period of more than one year ~~[from]~~ after the day  
 77 on which the employee is no longer employed by the employer.

78 (b) A post-employment restrictive covenant that violates this ~~[subsection]~~ Subsection  
 79 (1) is void.

80 (2) (a) Subject to Subsection (2)(b), a post-employment restrictive covenant between a  
 81 broadcasting company and a broadcasting employee is valid only if:

82 (i) the broadcasting employee is an exempt broadcasting employee;

83 (ii) the post-employment restrictive covenant is part of a written employment contract  
 84 of reasonable duration, based on industry standards, the position, the broadcasting employee's  
 85 experience, geography, and the parties' unique circumstances; and

86 (iii) (A) the broadcasting company terminates the broadcasting employee for cause; or

87 (B) the broadcasting employee breaches the employment contract in a manner that  
 88 results in the broadcasting employee no longer being employed by the broadcasting company.

89 (b) A post-employment restrictive covenant described in Subsection (2)(a) is

90 enforceable for no longer than the earlier of:

91 (i) one year after the day on which the broadcasting employee is no longer employed by  
92 the broadcasting company; or

93 (ii) the day on which the original term of the employment contract containing the  
94 post-employment restrictive covenant ends.

95 (c) A post-employment restrictive covenant between a broadcasting company and a  
96 broadcasting employee that does not comply with this [~~subsection~~] Subsection (2) is void.

97 (3) A post-employment restrictive covenant, independent contractor restrictive  
98 covenant, or nonsolicitation agreement between a home and community-based service provider  
99 and an employee or independent contractor of the home and community-based service provider  
100 is void.