

Government of the District of Columbia
Office of the Chief Financial Officer



Fitzroy Lee
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Fitzroy Lee
Chief Financial Officer 

DATE: June 15, 2022

SUBJECT: Fiscal Impact Statement – Non-Compete Clarification Amendment Act of 2022

REFERENCE: Bill 24-256, draft Committee Print as provided to the Office of Revenue Analysis on June 14, 2022

Conclusion

Funds are sufficient in the fiscal year 2022 budget and fiscal year 2023 through fiscal year 2026 budget and financial plan to implement the bill.

Background

The bill clarifies and makes amendments to the District's Ban on Non-compete Agreements¹ that is scheduled to take effect October 1, 2022. The bill clarifies that employers may prohibit employees' simultaneous employment that would:

- Result in the employee's disclosure or use of confidential employer information or proprietary employer information;
- Conflict with the employer's, industry's, or profession's established rules regarding conflicts of interest;
- Constitute a conflict of commitment if the employee is employed by a higher education institution; or
- Impair the employer's ability to comply with District or federal laws or regulations; a contract; or a grant agreement.

¹ By amending the Ban on Non-Compete Agreements Amendment Act of 2020, effective March 16, 2021 (D.C. Law 23-209; 68 DCR 782).

The bill removes the exemption for non-compete agreements with medical specialists and provides instead for an exemption for all "highly compensated employees," defined as employees who can expect to earn total annual compensation of \$250,000 (to be adjusted annually by inflation through rule-marking, beginning in 2024). To be enforceable, such agreements must:

- Have a duration of not more than 365 days after the employee leaves their job;
- Be limited by detailing the functional scope of the competitive restriction and geographical limitations; and
- Be provided to the employee at least 2 weeks before it must be signed.

The bill also revises the original law to:

- State that the law does not supersede the terms of a Collective Bargaining Agreement;
- Revise the definition of "employee" to clarify how the law applies to those working remotely or in more than one state;
- Extend the prohibition on non-compete agreements to broadcast industry employees, other than salespeople, regardless of how much they earn; and
- Remove the requirement for employers to provide notice of the Ban on Non-compete Agreements in a notice of hire.

Financial Plan Impact

Funds are sufficient in the fiscal year 2022 budget and fiscal year 2023 through fiscal year 2026 budget and financial plan to implement the bill.

The Department of Employment Services' (DOES) Office of Wage Hour Compliance is responsible for implementing the current Ban on Non-compete Agreements, including writing rules, promoting the bill's protections to employees, and investigating complaints received about employers violating the non-compete ban. The bill's clarifications and amendments to the ban are not expected to increase the anticipated workload for the agency.