New Connecticut Noncompetition Requirements for Employees of Surviving Entity of Mergers and Acquisitions

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On June 24, 2013, Connecticut Governor Dannel Malloy signed a new law to become effective on October 1, 2013, that imposes additional requirements for noncompete agreements in Connecticut. Public Act No. 13-309, broadly entitled *An Act Concerning Employer Use of Noncompete Agreements*, applies only to noncompete agreements signed, renewed or extended on or after October 1, 2013, between a surviving employer of a merger or acquisition and its employees.

Under the new law, if, after a merger or acquisition, an employee is being hired by or continuing his or her employment with the surviving entity, and the surviving entity intends to bind the employee to post-termination noncompetition restrictions, the employer must provide the employee with a written copy of the noncompete agreement and at least seven (7) days to consider signing the agreement.

Because continued employment or new employment is usually sufficient consideration for the signing of a noncompete agreement or covenant, it is important that the noncompete agreement be distributed prior to the employee's first day of work with the employer. As is often the case in a merger or acquisition setting, the employees that are "new" to the surviving entity are becoming employees of the surviving entity just after the closing of the transaction. As a result, businesses may find themselves in the uncomfortable position of giving employees advance notice of a contemplated business transaction before the closing occurs. Although the new law allows an employee to waive the statutory requirements in writing, even requesting a waiver of this statutory noncompete requirement may place the business in the position of having to disclose the contemplated transaction before it otherwise may have wanted to disclose it to its employees.

The law leaves unaffected an employee's right to seek judicial remedies under the common law. In Connecticut, only reasonable noncompete agreements are valid and enforceable. *Scott v. General Iron & Welding Co., Inc.* 171 Conn. 132 (1976). To determine whether a noncompete agreement is reasonable, Connecticut courts evaluate: (1) the duration of the restriction, (2) the geographical scope, (3) the fairness of protection afforded to the employer, (4) the extent of the restraint on employee's opportunity to pursue his/her occupation, and (5) the extent of interference with the public interest. *Robert S. Weiss & Assocs. v. Weiderlight*, 208 Conn. 525, 529 (1988). Under applicable standards, the restriction must be for a definite and reasonable time period and cover a geographical area that fairly protects both parties.

While the law is on its face limited to mergers and acquisition transactions, it is the first broadly applicable law regulating noncompete agreements with applicability to all employers regardless of size or industry in Connecticut. Previously, statutory law in the state restricted only the terms and enforcement of noncompete agreements for security guards, broadcast television and radio industry employees (C.G.S. §§ 31-50a & b, respectively), and attorneys (Rule of Professional Conduct 5.6).

Connecticut employers contemplating mergers or acquisitions should be aware of this statutory requirement for the enforceability of noncompete agreements. In light of the new law, employers should evaluate the validity and enforceability of their noncompete agreements, whether existing before, or to be signed, renewed or extended after October 1, 2013, especially if a merger or acquisition is on the horizon.

For questions regarding this Client Update, please contact the Burns & Levinson Labor & Employment Group or:

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