



MEDIA RELEASE

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Governor's Signature Institutes Changes to Noncompetition Agreements Championed by Labor Commissioner's to Protect Oregon Workers

On Friday, Governor Ted Kulongoski signed Senate Bill 248 into law. The bill expands protections for the vast majority of Oregon workers from growing reach of noncompetition agreements. The law takes effect on January 1, 2008.

Oregon Labor Commissioner Dan Gardner sponsored the bill to turn back the recent expansion in use of noncompetition agreements against hourly and nonmanagerial workers such as parking lot attendants, call center operators and home cleaning service workers.

“There is a dangerous expansion in the use of noncompetition agreements in Oregon and Oregon workers are being unfairly prevented from working in their chosen fields of expertise,” said Gardner. “The passage of Senate Bill 248 means noncompetition agreements will only be enforceable against highly paid managers and professional staff and only if certain conditions are met.”

Senate Bill 248 resulted from the cooperative efforts of the Labor Commissioner, Nike, the Oregon Electronics Association, the Software Association of Oregon, the Oregon Trial Lawyers Association and Rep. Greg Macpherson, the chair of the Oregon House Judiciary Committee.

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The key provisions of the final bill include:

- Those employees, primarily hourly and nonsupervisory - currently considered “non-exempt” employees under ORS 653.020 - cannot be subject to non-competition agreements.
- Employees must be informed about a noncompetition agreement in a written employment agreement at least two weeks before the first day of work;
- A noncompetition agreement is not enforceable unless the employer has a "protectable" interest (defined in the bill), including access to trade secrets, product development plans, product launch plans, marketing strategy; sales plans; or an employer of on-air talent has expended resources equal to or exceeding 10 percent of that employee’s annual salary to develop, improve, train or publicly promote the employee.
- A noncompetition agreement cannot be enforced against an employee whose total gross salary is less than that of the median income of a family of four in Oregon (currently approximately \$61,000 a year);
- A noncompetition agreement cannot last longer than two years;
- An employer CAN enforce a noncompetition agreement if the employer is willing to pay the employee at least 50% of the employee’s base salary for the length of the agreement or 50% of the median income figure for a family of 4 in Oregon (currently about \$61,000 a year).
- The final amendments to the bill require broadcasting companies to pay on-air talent either 50% of their salary or half the median income figure (see above) for the length of a noncompetition agreement in order to enforce it.
- The bill’s requirements do not apply to agreements prohibiting a former employee from revealing or contacting customers of their previous employer.

Gardner noted that a key element used currently by courts to decide noncompetition disputes is a standard of “reasonableness.” That is: “is the agreement reasonable in scope?”

“Under current law, the application of noncompetition agreements in Oregon is not reasonable,” Gardner said. Senate Bill 248 brings Oregon law must closer to meeting that standard for a greater majority of Oregon workers.”

