

# PUBLICATION

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## Colorado Adds Criminal Penalties to Unenforceable Non-Compete Agreements

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**On March 1, 2022, Colorado added criminal penalties to its existing non-compete law. This is part of a wider trend to limit the reach of non-compete agreements. While it is unclear how expansive enforcement will be, employers with Colorado employees should take care to comply with the state's requirements.**

Colorado **now punishes** invalid non-compete agreements as class 2 misdemeanors. The state already prohibited employers from intimidating workers to prevent them from competing or implementing non-compete (including non-solicitation) agreements except for:

Any contract for the purchase and sale of a business or the assets of a business;

Any contract for the protection of trade secrets;

Any contractual provision providing for recovery of the expense of educating and training an employee who has served an employer for a period of less than two years;

Executive and management personnel and officers and employees who constitute professional staff to executive and management personnel.

Notably, even if an exception applies, any restriction must be temporally and geographically reasonable.

Though Colorado did not amend the underlying rules about enforceability of non-compete agreements, it did create **new criminal penalties**. A violation of this statute is punishable by up to 120 days of imprisonment, up to a \$750 fine, or both.

### Takeaway

It is too soon to tell how courts will interpret or enforce the new provision. For example, courts may very well apply the criminal penalty to both the unlawful non-compete agreements and the intimidation of workers portions of the statute. Even so, it remains to be seen whether the criminal penalty extends to asking an employee to sign an invalid non-compete agreement or if it will be more narrowly applied to only the attempt to enforce an unlawful contract.

So what does this mean for companies with employees in Colorado? Employers should review their employment agreements to confirm compliance with Colorado law. This is especially important for those with employees across multiple states. We also anticipate that states will continue to move toward greater protections for employees in the future. If you have any questions or need assistance reviewing your agreements, please contact one of the authors or any member of Baker Donelson's [Labor & Employment Team](#).