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Illinois Raises the Bar for Non-Compete and Non-Solicitation Agreements Starting January 1, 2027

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By Greg Abrams

The required income thresholds for non-competition and non-solicitation agreements with Illinois employees are increasing. Starting January 1, 2027, under the Illinois Freedom to Work Act, an employee will need to earn more than $80,000 annually for an enforceable non-competition agreement, and more than $47,500 annually for an enforceable non-solicitation agreement.

What types of agreements are covered?

A non-competition agreement (or "non-compete") restricts an employee from performing any work for another employer, from working in a specified geographic area, or doing similar work for another employer after leaving employment.

A non-solicitation agreement (or "non-solicit") restricts an employee from recruiting other employees or pursuing or interfering with the employer's clients, customers, prospective clients, and other business relationships.

Agreements that are *not* subject to these income thresholds generally include confidentiality agreements, agreements prohibiting disclosure of trade secrets, and agreements related to the sale of businesses.

What is changing?

The income thresholds to enforce a non-compete or non-solicit in Illinois are changing as follows:

Type of Agreement	*Through December 31, 2026, earnings must exceed:*	*Starting January 1, 2 exceed:*
Non-compete	$75,000 per year	$80,000 per year
Non-solicit	$45,000 per year	$47,500 per year

Note that the annual earnings must *exceed* these amounts; pay *at* these levels is *not* sufficient.

How are annual earnings determined?

Earnings encompass earned salary, bonuses, commissions, and other taxable compensation on an employee's IRS Form W-2. It also includes certain elective deferrals such as employee contributions to a 401(k) plan or flexible spending account.

What happens if an employee making less than these thresholds signs a non-compete or non-solicit?

The restrictions embodied in the purported non-solicit or non-compete would be deemed void and unenforceable. If an employer seeks to enforce such an agreement and loses, the employee can recover their costs and reasonable attorneys' fees resisting such an action.

What about employees who already signed a non-solicit or non-compete?

These changes affect only agreements entered into on or after January 1, 2027.

Is anything else required for an enforceable non-compete or non-solicit in Illinois?

Yes. Non-competes and non-solicits must satisfy additional requirements, including that they be supported by adequate consideration, be ancillary to a valid employment relationship, be no greater than is required to protect the employer's legitimate business interest, not impose undue hardship on the employee, and not injure the public. Employees also must be advised in writing to consult with an attorney before entering into the agreement and be given at least 14 days to review the agreement before signing.

What steps should employers take now?

Proactive steps in advance of the January 1, 2027, change in the income thresholds include:

- Confirm the total compensation of Illinois-based employees starting January 1 or later before utilizing non-competes or non-solicits with these individuals.
- Review template agreements, offer letters, and other onboarding materials to ensure that they meet these higher pay amounts.
- Update employee handbooks and other policies that address non-compete and non-solicits.
- Consider using this opportunity to review restrictive covenants for compliance in other states that may have stricter requirements.

Additional Information

For more information, please contact:

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