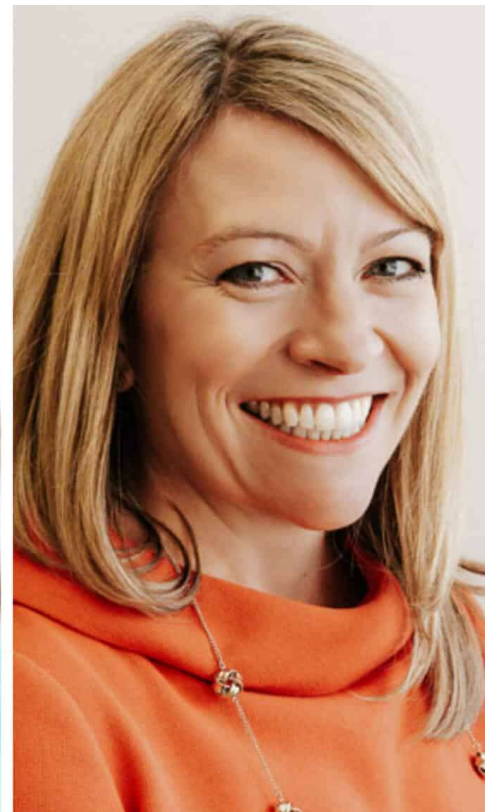


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New law makes it harder to restrict employees from going to competitor

👤 *Justin Wingerter* (<https://Businessden.Com/Author/Justin-Wingerter/>)

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to-competitor/non-compete-photo/)

Justin Plaskov, left, is an employment law attorney with Jester Gibson & Moore. Elizabeth Chilcoat, center, is a labor and employment attorney at Sherman & Howard. Kendra Prospero, right, is CEO of human resources firm Turning the Corner. *(Courtesy photos)*

A state law that went into effect last Wednesday will significantly curtail the use of a popular, and sometimes controversial, clause in white-collar employment contracts.

The law makes it far more difficult for employers to require their workers to sign agreements stating they won't immediately work for a competitor upon leaving.

"I really think that this completely reshapes the non-compete landscape in Colorado moving forward," said Justin Plaskov, an employment law attorney with Jester Gibson & Moore.

He added, "It's going to take some time to work its way through the workforce, because non-competes that were signed prior to this new bill going into effect will still be effective. But moving forward we think there is going to be a real shift."

Before last week, non-compete agreements were legal and enforceable if signed by executives, managers or anyone with some access to trade secrets. Since last week, they're only legal and enforceable if they are signed by workers making more than \$101,000 and if they are no broader than necessary to protect trade secrets.

"The question was, is there anything good in this law for employers?" Elizabeth Chilcoat, a labor and employment attorney at Sherman & Howard in Denver, said during a panel discussion last month. "The answer is no."

The law also makes it far riskier for companies to include non-compete clauses in contracts. Intimidating a worker into signing one is now a crime punishable by 60 days in jail. Even presenting an unenforceable non-compete to a prospective worker is punishable by a \$5,000 fine.

"I think this is almost certainly going to increase the amount of litigation that goes on between businesses and their former workers about misappropriation of trade secrets and protection of trade secrets," Chilcoat said.

Others see it differently. Plaskov said the new law is far less ambiguous than the previous law and therefore could result in less litigation. Kendra Prospero, CEO of the Denver human resources firm Turning the Corner, said her client companies aren't worried.

"My question is always, why do you need that?" she said of non-competes. "Generally, the answer will come back to they don't want to lose their employee to the competition. Well, there are a gazillion ways to prevent that, and I'm more interested in those conversations."

Plaskov and Prospero said they have seen a proliferation of non-compete clauses in recent years, so much so that barbers and other low-wage workers have been required to sign them.

“If this law really irks some (employer) and it really makes them feel like they are getting the short end of the stick, there’s probably a bigger issue going on inside the organization that stems, deep down, from a lack of trust with their employees,” Prospero said.

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