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CONNECTICUT PROPOSES TO LIMIT FURTHER THE SCOPE OF NON-COMPETE PROVISIONS IN PHYSICIAN EMPLOYMENT CONTRACTS

In Connecticut, non-compete provisions in physician employment agreements, also known as restrictive covenants, have long been considered reasonable restrictions on competition and enforceable. In order to pass muster, such provisions must be found reasonable based upon an analysis of several factors: (1) length of restriction, (2) geographical area covered, (3) fairness of protection provided the employer, (4) the extent of the restriction on the employees' opportunity to pursue the employee's occupation, and (5) any interference with the public interest.

In 2016, however, Connecticut started to chip away at the breadth of such provisions. Effective July 1, 2016, it enacted a statute that, among other features, limited restrictive covenants to a period of one (1) year and a geographic scope of no more than fifteen (15) miles from the "primary site" at which the physician had practiced. It also provides that a restrictive covenant is unenforceable where the employment relationship is terminated by the employer without cause.

Connecticut has recently taken steps towards imposing further limitations on non-compete provisions. This week a bill was introduced for consideration that will render unenforceable such provisions entered into, amended, extended or renewed on or after July 1, 2021, if the employment or contractual relationship is terminated by the employer or if the employment or contractual relationship is terminated by the employee for good cause attributable to the employer.

Although it is uncertain whether this bill will become law, employers should view this legislative effort as a firm reminder to draft restrictive covenants as carefully and narrowly as possible in order to maximize the likelihood of them being found enforceable should there be a judicial challenge. In response to the Connecticut statute, we have counseled our clients to expand appropriately and reasonably their non-solicitation and confidentiality provisions to offset the impact of the diminished impact of non-compete provisions. The margin of error is tightening, and an employer does not want to find itself having an otherwise enforceable restrictive covenant nullified merely because the employer overreached in defining its terms.

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Should you have any questions regarding the above, please contact the Garfunkel Wild attorney with whom you regularly work or send an email to info@garfunkelwild.com.

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