

Representative Anthony E. Loubet proposes the following substitute bill:

POST-EMPLOYMENT RESTRICTIONS REVISIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Anthony E. Loubet

Senate Sponsor: Kirk A. Cullimore

LONG TITLE

General Description:

This bill amends the Post-employment Restrictions Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits certain agreements between a disability service provider and an employee or independent contractor that impact the employee's or independent contractor's ability to provide certain disability services after employment with the disability service provider ends; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34-51-102, as last amended by Laws of Utah 2018, Chapter 465

34-51-201, as last amended by Laws of Utah 2019, Chapter 132



26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **34-51-102** is amended to read:

34-51-102. Definitions.

As used in this chapter:

(1) "Broadcasting employee" means an employee of a broadcasting company.

(2) "Broadcasting company" means a person engaged in the business of:

(a) distributing or transmitting electronic or electromagnetic signals to the general public using one or more of the following:

(i) television;

(ii) cable; or

(iii) radio; or

(b) preparing, developing, or creating one or more programs or messages for distribution or transmission by means described in Subsection (2)(a).

(3) (a) "Disability" means a mental condition that materially limits an individual's activities or functioning.

(b) "Disability" includes autism spectrum disorder.

(4) "Exempt broadcasting employee" means a broadcasting employee who is compensated on a salary basis, as defined in 29 C.F.R. Sec. 541.602, at a rate equal to or greater than the greater of:

(a) \$913 per week, or an equivalent amount if calculated for a period longer than one week; or

(b) the rate at which an employee qualifies as exempt under the Fair Labor Standards Act, 29 U.S.C. Sec. 213(a) on a salary basis as defined in 29 C.F.R. Part 541.

(5) "Home and community-based service provider" means a person who provides support, supervision, or assistance to an individual with a disability in a residential setting, private home, or in the community.

(6) "Independent contractor restrictive covenant" means an agreement, written or oral, between an employer and an independent contractor under which the independent contractor agrees that the independent contractor, either alone or as an employee or independent contractor of another person, will not compete with the employer in providing products,

57 processes, or services that are similar to the employer's products, processes, or services.

58 [~~(4)~~] (7) (a) "Post-employment restrictive covenant," also known as a "covenant not to
59 compete" or "noncompete agreement," means an agreement, written or oral, between an
60 employer and employee under which the employee agrees that the employee, either alone or as
61 an employee of another person, will not compete with the employer in providing products,
62 processes, or services that are similar to the employer's products, processes, or services.

63 (b) "Post-employment restrictive covenant" does not include nonsolicitation
64 agreements or nondisclosure or confidentiality agreements.

65 [~~(5)~~]

66 (8) "Sale of a business" means a transfer of the ownership by sale, acquisition, merger,
67 or other method of the tangible or intangible assets of a business entity, or a division or
68 segment of the business entity.

69 Section 2. Section **34-51-201** is amended to read:

70 **34-51-201. Post-employment restrictive covenants -- Home and community-based**
71 **service provider restrictions.**

72 (1) (a) Except as provided in [~~Subsection (2)~~] Subsections (2) and (3) and in addition
73 to any requirements imposed under common law, for a post-employment restrictive covenant
74 entered into on or after May 10, 2016, an employer and an employee may not enter into a
75 post-employment restrictive covenant for a period of more than one year [~~from~~] after the day
76 on which the employee is no longer employed by the employer.

77 (b) A post-employment restrictive covenant that violates this [~~subsection~~] Subsection
78 (1) is void.

79 (2) (a) Subject to Subsection (2)(b), a post-employment restrictive covenant between a
80 broadcasting company and a broadcasting employee is valid only if:

81 (i) the broadcasting employee is an exempt broadcasting employee;

82 (ii) the post-employment restrictive covenant is part of a written employment contract
83 of reasonable duration, based on industry standards, the position, the broadcasting employee's
84 experience, geography, and the parties' unique circumstances; and

85 (iii) (A) the broadcasting company terminates the broadcasting employee for cause; or

86 (B) the broadcasting employee breaches the employment contract in a manner that
87 results in the broadcasting employee no longer being employed by the broadcasting company.

88 (b) A post-employment restrictive covenant described in Subsection (2)(a) is
89 enforceable for no longer than the earlier of:

90 (i) one year after the day on which the broadcasting employee is no longer employed by
91 the broadcasting company; or

92 (ii) the day on which the original term of the employment contract containing the
93 post-employment restrictive covenant ends.

94 (c) A post-employment restrictive covenant between a broadcasting company and a
95 broadcasting employee that does not comply with this [~~subsection~~] Subsection (2) is void.

96 (3) (a) A post-employment restrictive covenant or independent contractor restrictive
97 covenant between a home and community-based service provider and an employee or
98 independent contractor of the home and community-based service provider is void.

99 (b) A home and community-based service provider may not enter into an agreement
100 with an employee or independent contractor that limits the right of an individual with a
101 disability to choose to receive services from the employee or independent contractor after the
102 day on which the employee or independent contractor ceases to be employed by the home and
103 community-based service provider.