

# S.562 (Hoylman) / A.1463 (Dinowitz)

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<b>BILL</b> S.562 (Hoylman) / A.1463 (Dinowitz)
<b>SUBJECT</b> Prohibiting Agreements Between Employers That Directly Restrict the Current or Future Employment of Any Employee
<b>DATE</b> May 10, 2022
<b>OPPOSE</b>

This bill proposes to amend the general obligations law, in relation to prohibiting agreements between employers that directly restrict the current or future employment of any employee. Employers recognize that these agreements and other restrictive covenants may sometimes limit an employee’s ability to work and earn a living. Because of the serious nature of these agreements, employers do not enter into these agreements lightly. It is important to recognize, however, that from time to time these agreements are necessary. For that reason, The Business Council opposes this bill.

Through the years, New York Courts have developed a “reasonableness test” that has struck a balance between protecting legitimate employer interests with worker’s abilities to earn a living. We believe this test is adequate in protecting the interests of both parties.

In short, the Courts have held that to be considered enforceable, restrictive covenants must be:

1. No greater than what is required for the protection of the legitimate interest of the employer,
2. Does not impose undue hardships on the employee, and
3. Is not injurious to the public

Importantly, an employer’s legitimate interest has been defined as:

1. Able to prevent disclosure of trade secrets or employee/client solicitation,
2. To prevent disclosure of private client information, or
3. Where the employee has a skill and service that is considered “special or unique.”

The Business Council always suggests to its members to review with counsel all non-compete/restrictive covenant provisions to ensure it complies both with reasonableness and timeliness standards already in place. This legislation would impose upon New York employers another burden of compliance and increase risk to their legitimate business interests that could result in them becoming less competitive with businesses in other states.

For these reasons, The Business Council, on behalf of its 3,200 members urges that this legislation not become law.