

**BERNABEI & KABAT, PLLC**

ATTORNEYS AT LAW

1400 16th STREET, N.W., SUITE 500

WASHINGTON, D.C. 20036-2223

LYNNE BERNABEI

202.745.1942

KELSEY SPEYER

ALAN R. KABAT

FAX: 202.745.2627

WWW.BERNABEIPLLC.COM

SB 591: Labor and Employment – Noncompete and Conflict of Interest Provisions  
– Application of Prohibition

Hearing of the Senate Finance Committee, March 2, 2023

Position: Favorable

Chair Griffith and Members of the Senate Finance Committee:

I am Lynne Bernabei from the law firm of Bernabei & Kabat and am testifying on behalf of the Metropolitan Washington Employment Lawyers Association, the bar association whose members are attorneys representing workers in Maryland, Washington D.C., and Virginia. I previously testified before the Federal Trade Commission, on behalf of the National Employment Lawyers Association, in support of the FTC's proposed ban on most non-competes. Since its rule banning non-competes is not yet law, it is very important that the Maryland legislature amend its legislation to protect workers who earn less than 150 percent of the minimum wage.

Non-competes have an especially harsh effect on low-wage workers.

Statistics show about 40 percent of employees in Maryland earn the minimum wage or up to 150 percent of the soon-to-be \$15 per hour minimum wage. Non-competes are widespread for low-wage workers, including those who work at fast food restaurants and as security guards. These are the essential workers whom we

so lauded during the pandemic. Making sure that they are not subject to non-competes is the best way to thank them for serving us throughout the pandemic.

There are three major problems with non-competes as to low-wage workers that I want to highlight:

First, non-competes can keep low-wage workers locked into bad jobs, because geographical restrictions force them to look for employment alternatives far from their current employer. This means that these workers have to spend more time and money in commuting to a new job if they are bound by a non-compete.

Second, low wage workers do not have the funds to challenge non-competes, even if these bans are clearly overbroad or illegal. Even middle class and upper middle-class employees often find it difficult to challenge overbroad non-competes.

Third, non-competes force low-wage workers to put up with and not report on-the-job discrimination and harassment, or dangerous working conditions and other illegalities in their workplace. In this way, non-competes impair the effective enforcement of the anti-discrimination and whistleblower statutes on the books.

Ensuring that non-competes do not apply to essential workers will ensure a fair and more just workplace.

For these reasons I urge a favorable report on SB 591. Thank you.