State Legislatures Heed the Obama White House's "Call to Action": Part 1 of a 3-Part Series Examining State-Level Restrictive Covenant Activity

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State legislatures across the country have been active in recent years proposing and enacting legislation concerning employers' use of restrictive covenants. These new laws alter the legal landscape in an area where compliance was already difficult due to the vast differences between states. It is imperative that employers stay up-to-date on these changes. Accordingly, this will be the first of three posts addressing the recent wave of state-level legislative activity in this area that we have seen over the past year and a half.

Of course, state legislatures are not operating in a vacuum, and in this instance are acting on reform efforts that started in Washington. In 2015, Senator Christopher Murphy (D. Conn.) and former Senator Al Franken introduced a bill called the Mobility and Opportunity for Vulnerable Employees (MOVE) Act that would have prohibited non-compete agreements with respect to low wage earners. Ultimately, the bill was not successful but it created a stir. The calls for reform were picked up by the Obama administration. The Department of Treasury and White House issued two reports on the "overuse" of non-competes, culminating in October 2016 with the White House's Call to Action to state legislatures. The Call to Action included specific "Best-Practice Policy Objectives" aimed at curbing misuse of noncompetes. After the Call to Action issued, President Trump was voted into office. Despite the change in administration, federal activity has not ended and the push for federal legislation continues.

Our upcoming posts will pick up here and look back at both enacted and proposed state-level restrictive covenant legislation with Post Two looking at the legislation that has been enacted and Post Three examining the legislation that has been proposed.