

Insights

Is Your Non-Compete Buy-Out Reasonable?

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As we reported **previously**, earlier this year, the Indiana Legislature passed **House Bill 1004**, which created a new law affecting physician noncompete agreements and physician separations codified at **Indiana Code 25-22.5-5.5** that went into effect on July 1, 2020.

The new law sets out five provisions that must be included in any noncompete agreement between an employer and a physician "originally entered into on or after July 1, 2020," the most challenging of which is the requirement providing the departing physician the option to purchase a complete and final release from the terms of the non-compete at a "reasonable price". The Legislature did not define "reasonable price" or provide any guidance or factors as to what a "reasonable price" might be in any individual circumstances. It is also not clear from the legislation whether the parties must agree on a reasonable price when drafting the agreement, whether demanding an unreasonable price would invalidate the entire noncompete agreement, or whether a court may determine what constitutes a reasonable price.

Amendments to existing employment agreements do not require the addition of the buy-out provision, but employers must now comply with this new law for all new physician employment agreements. Employers are still struggling to define a buy-out price, with many opting to simply use the concept of "reasonable" and worry about it later. Others have used the concept of "reasonable" and have also specified the use of certain reputable valuation firms. Still others have tied it back to a fixed dollar amount or fixed concept, like "an amount equal to the prior 12 months salary." As of yet, there is still no standard approach. It will likely be left to the courts to determine what is reasonable, which could significantly impact litigation over noncompete provisions.

Each approach has its pros and cons depending on the particular employer and the particular medical specialty. More certain and employer favorable approaches may be available for physicians who are becoming owners of a private practice and/or a facility like an imaging or surgery center.

If you would like help evaluating your current form of employment agreement or an offer from a prospective employer, please contact **Thomas N. Hutchinson, Robert A. Anderson, Amy J. Adolay** or your other Krieg DeVault contact.

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