

Washington Employers Must Be Careful about Which Employees are Required to Enter into Non-Compete Agreements

by Michael Droke and Aaron Goldstein

On January 23, 2025, the Washington Supreme Court held employers who pay their employees less than twice the minimum wage cannot prohibit them from working second jobs, subject to a few, limited exceptions. Employers who attempt to restrict its employees paid less than twice the state's minimum wage are subject to damages and fees. *David v. Freedom Vans*, Case No. No. 102566-1 (2025). This is the first case in which the Supreme Court reviewed Washington's new non-compete statute.

Jeremy David was a shop assistant at Freedom Vans, where he was responsible for maintaining the company's premises. Mark Springer, another employee, was hired as an automotive and maritime mechanic. Neither employee earned more than twice the state's minimum wage, but Freedom Vans required both employees sign a non-compete agreement prohibiting them from "directly or indirectly engag[ing] in any business that competes" with Freedom Vans during their employment. The employees acknowledged they had a common law duty of loyalty which prohibited them from acting in direct competition with their employer during employment, but argued they were still permitted to engage in indirect competition by working for another employer and doing job duties unrelated to their job duties with Freedom Vans. Freedom Vans attempted to extend the duty of loyalty to all kinds of assistance. The Supreme Court disagreed, holding that while employees have a duty of loyalty to their current employer, under RCW 49.62.70, employers cannot prohibit employees making less than twice the state's minimum wage from engaging in all kinds of assistance with a competitor. Accordingly, the Supreme Court remanded to the superior court to determine whether Freedom Vans' non-compete agreement was reasonable and enforceable under RCW 49.62.70.

Employers should exercise caution when requiring employees to sign a non-compete agreement. RCW 49.62.070 was created to protect employees and to reinforce the state's public policy that recognizes the importance of employee mobility. *David v. Freedom Vans* reaffirms that, although employees have a duty of loyalty to their employer, employers cannot impose restrictions that unfairly limit some their workers' ability to earn a living. For example, employers must not only determine non-compete

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terms that are reasonable to protect the company's business interests. Employers must also carefully determine which employees can even sign a non-compete agreement. The consequences of requiring an employee who is exempt from entering into a non-compete could entitle the employee to damages and attorneys' fees.