

전직금지, 경업금지 약정을 저임금 근로자에게는 적용 불허, 사용자의 대가 지급 의무 부과 등 미국의 최근 입법동향 발표자료 소개



쟁점 – 종업원, 근로자의 생존권, 직업선택의 자유 보장 방안

*Corporate Synergies Group, LLC v. Andrews, et al., No. 18-cv-13381 (D.N.J. Oct. 3, 2018):*

■ **Facts:**

- Non-compete prohibited defendant's employment in any capacity at another company in the same business
- Defendant argued it "would bar him from even working as a janitor at another company"

■ **Held:**

- Court agreed and invalidated the restrictive covenant
- Notably, Court declined to modify the overly broad restrictive covenant, determining that there was "no factual scenario under which it would be reasonable"

■ **Take away:**

- **Draft non-competes (and other restrictive covenants) as narrowly as possible to meet legitimate business needs – and not be so broad as to bar an employee from even working as a janitor for a competitor**

- 전직자의 주장 – 동종업계 다른 회사의 Janitor(문지기, 경비) 조차 할 수 없다고

향변

- 미국법원 판결 – 광범위한 전직금지, 경업금지 조항의 효력 불인정

## 최근 미국입법 동향

### Massachusetts Noncompetition Agreement Act (2018)

- Mandatory "garden leave" **pay** during non-compete period of at least 50% of employee's highest annualized base salary within the 2 years preceding employee's termination, or "other mutually-agreed upon consideration between the employer and employee, provided that such consideration is specified"
- 전직금지 기간 동안 임금의 50% 이상 대가지급 의무 명시

### Washington House/Senate passed Bill Limiting Enforceability of Noncompetition

#### Agreements on April 17, 2019

- Will render unenforceable non-competition provisions signed by employees earning less than \$100,000 and independent contractors earning less than \$250,000 annually
- Any non-competes exceeding 18 months will be considered unreasonable and unenforceable
- 연봉 10만불 이하 종업원, 연수익 25만불 이하 계약자에 대한 전직금지, 경업금

## 지 약정의 적용 제외

- 전직금지, 경업금지 기간은 최대 18개월, 초과 시 효력 불인정

첨부: 미국변호사 발표자료

경업금지, 전직금지, 부정경쟁, 영업비밀, 손해배상, 형사고소, 민사소송, A~Z 수행경력

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