



Executive Compensation and Benefits Alert

If you have any questions regarding the matters discussed in this memorandum, please contact the attorneys listed on the last page or call your regular Skadden contact.

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Four Times Square
New York, NY 10036
212.735.3000

Reminder: Review Equity Award Forms for Massachusetts Employees

Many employers make annual employee equity grants in late February and March. This year, companies should review their form equity award agreements to determine whether a different form is needed for participants who live or work in Massachusetts in order to comply with the requirements under the new Massachusetts Noncompetition Agreement Act (which became effective October 1, 2018). If the grant, vesting, payment or retention of the award is conditioned on the participant's compliance with a noncompete covenant, a special Massachusetts form will likely be needed.

For example, under the new rules:

- Employers must pay or provide for "garden leave" or "other mutually-agreed upon consideration" if a post-employment noncompete covenant is included;
- The duration, geographic reach and scope of the noncompete must fit within specified parameters; and
- A post-employment noncompete restriction is enforceable only in limited circumstances: following an employee's termination of employment for cause or an employee's resignation from the company (not following an involuntary termination).

Next Steps

Companies should determine whether a special Massachusetts form is needed prior to the grant of their annual equity awards. More generally, companies should examine their noncompete agreements with Massachusetts employees, whether stand-alone or embedded in another employee agreement, to determine whether any changes are needed in response to the new law.

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Contacts

Regina Olshan

Partner / New York
212.735.3963
regina.olshan@skadden.com

Joseph M. Penko

Partner / New York
212.735.2618
joseph.penko@skadden.com

Erica Schohn

Partner / New York
212.735.2823
erica.schohn@skadden.com

David E. Schwartz

Partner / New York
212.735.2473
david.schwartz@skadden.com

Joseph M. Yaffe

Partner / Palo Alto
650.470.4650
joseph.yaffe@skadden.com

Timothy F. Nelson

Counsel / Boston
617.573.4817
timothy.nelson@skadden.com

Young M. Park

Associate / Boston
617.573.4877
young.park@skadden.com