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Bill Would Ban Non-Compete Clauses For Minors, Low-Wage Workers

The Jimmy John's sub shop, back in 2014, began asking nearly all its employees to sign non-compete clauses, which would have blocked those workers from taking new jobs or even second jobs with sandwich shops located within three miles of any Jimmy John's location, Rep. Mari Manoogian (D-Birmingham) told the House Commerce and Tourism Committee today.

"Like most people, I was absolutely shocked at just how restrictive these agreements were and how broadly they were being used," Manoogian said. ". . . Many other restaurants were using them for the purpose of limiting their workers' ability to leave for other opportunities . . . Studies show that 1 in 5 American workers is subject to a non-compete agreement, and while I understand there are some instances that require these agreements, these are low-wage workers. We are talking about 14% of folks who do not have college degrees have these non-compete agreements."

She was advocating for her HB 4874, which prohibits businesses from asking a minor or a worker making 138% of the federal poverty level or less to sign a non-compete agreement.

Manoogian said that works out to about $14.50 per hour.

Peter Ruark of the Michigan League for Public Policy said he calculates that pay rate at $27,579 per year.

"Still, this is a very good start," Ruark said. ". . . The Economic Policy Institute just released a paper in December 2019 on this topic and they commissioned a study that showed, in Michigan, 38% of workplaces in Michigan subject all of their workers to a non-compete agreement and 55% subject any of their workers, which I interpret as meaning at least one, to a non-compete agreement."

Wendy Block, of the Michigan Chamber of Commerce, who spoke in opposition to the bill, noted that the Jimmy John's issue is settled. Indeed, the national fast food chain dropped its use of the non-compete agreements after it was sued by Attorneys General in Illinois and New York in 2016.

In fact, the company issued a statement to Reuters at the time saying it was already phasing out use of the agreements by the time of the lawsuits and that the company had never tried to enforce one of the agreements against an hourly worker.

Still, Manoogian contended the agreements were originally designed for mid- to high-level employees, but "they have been abused far beyond their purposes."

"Academic studies conducted at the University of Maryland and the University of Michigan have shown a rise in use of these agreements, reducing wages, job hunt ability and entrepreneurship. When abused, they keep workers back in low-wage jobs where they are dependent on government benefits to make ends meet," Manoogian said. "An unintended consequence of a non-compete agreement is that it limits someone's greatest leverage, the freedom, the ability leave their current job for another. That freedom allows a worker to negotiate with their employer. This is the free market in action."

And she got support from other testifiers, including David Blanchard, an employment attorney who was representing the Michigan Association of Justice.

"Almost by accident, Michigan opened the door to non-compete enforcement in 1985," Blanchard said. "Before that time, generally, it was regarded as wrong, unethical, against public policy and a violation of anti-monopoly laws. We have to keep in mind, in this context, that this is an exception itself. The entire area of enforcement of non-competes is an exception to our free market system, an exception to free bargaining and negotiating of labor."

Blanchard said low-wage workers often don't challenge non-compete clauses in court because they don't have the extra cash to spend on an attorney. And if a low-wage worker wants to become an entrepreneur, they typically can't work legal fees into their business plan.

But Block said there are restrictions on the use of non-compete clauses now. The clauses have to be relevant to the business and seen as reasonable.

The courts have developed 30 years of case law on the subject and have consistently penalized businesses for being overly restrictive with such clauses, she said.

Block said she won't defend what Jimmy John's did. She called that situation "ridiculous," but pointed out that it is settled now.

Commerce Chair Steve Marino (R-Mt. Clemens) said that when Manoogian first approached him with the idea for the bill, his reaction was that he "loves non-competes."

He told *MIRS* he's has held numerous positions where he's been subject to a non-compete clause, but the clauses made sense to him.

"But when I actually looked into the bill . . . when you type in Google and non-compete clauses for low-wage employees, I see several news stories pop up," Marino said. "The sheer existence of it was something that I didn't know was permissible, was in existence. I was surprised that the courts, not being an attorney, would even uphold this."

He said he was surprised a low-wage worker at McDonald's would be barred from walking across the street to make an extra dollar per hour at Burger King, as an example.

"One thing that wasn't addressed in testimony was people potentially working two jobs. Maybe you work the morning shift at McDonald's and work the evening shift at Burger King. You would not be able to do that. I don't want to make this about restaurants. I want to protect all workers that are in that situation," Marino said.