# Urgent Compliance Concern — Are Your Subpoena Response Procedures Adequate to Protect Patient Health Information?

When your organization receives a subpoena demanding patient medical records, your staff's instinct may be to comply — quickly and without question as it appears to be a court document. That instinct can expose your organization to devastating consequences: six-figure civil penalties, criminal prosecution, tort liability, and irreparable reputational harm.

This alert summarizes the critical compliance risks that healthcare organizations face when responding to subpoenas for protected health information ("PHI"), with particular emphasis on the heightened requirements that apply to substance use disorder ("SUD") treatment records under 42 C.F.R. Part 2 ("Part 2"). If your organization treats patients with SUDs, the stakes are even higher, and the margin for error is essentially zero.

## A Subpoena Is Not a Court Order, And the Distinction Is Everything

One of the most common and dangerous misunderstandings in this area is the assumption that a subpoena carries the same legal authority as a court order. It does not. A court order is issued and signed by a judge. A subpoena, by contrast, may be issued by a court clerk or even, in some jurisdictions, by an attorney alone. Under HIPAA, a covered entity may disclose PHI without patient authorization in response to a court order, but only to the extent expressly authorized by that order. A subpoena alone is legally insufficient to authorize disclosure.

Under HIPAA, disclosure in response to a subpoena alone requires additional "satisfactory assurances," specifically, that the requesting party has either (a) notified the patient of the request or (b) made reasonable efforts to secure a qualified protective order. Without those assurances, producing records in response to a subpoena is a HIPAA violation, regardless of how official the subpoena appears. This standard is a gray area and is often subject to additional litigation if a patient alleges they were not actually notified or did not consent to the disclosure. This risk makes a court order the vastly preferred option from a health care provider's standpoint.

## Part 2 Imposes Even Stricter Requirements on SUD Records

If your organization either receives federal assistance and holds itself out as providing SUD diagnosis, treatment, or referral for treatment, or receives information from such an organization, then Part 2 applies to you. Under Part 2, SUD treatment records may not be disclosed in a civil proceeding unless the court issues a specialized court order based on a judicial finding of "good cause," and courts apply a strong presumption against disclosure. Even after such an order is entered, a separate subpoena must still be issued to compel production – the order alone does not require disclosure. Part 2's restrictions also extend to anyone who subsequently receives protected SUD records, including outside counsel.

## The Consequences Are Severe

Mishandling a subpoena for PHI or Part 2-protected records can trigger any or all of the following:

Civil penalties under HIPAA ranging from $100 to $50,000 per violation, depending on the violator's mental state. Criminal penalties for intentional violations of up to $250,000 in fines and up to 10 years of imprisonment. Part 2 violations are subject to the same civil and criminal penalties imposed for HIPAA violations. State tort liability may also apply, including claims for negligence, medical malpractice, invasion of privacy, and breach of the physician-patient privilege. And the reputational consequences of a privacy breach involving vulnerable patients (particularly those with substance use disorders) cannot be overstated. Patients who fear that their SUD treatment records may be disclosed are less likely to seek or remain in treatment, compounding the public health crisis.

## Where Organizations Get It Wrong

The most common, and most dangerous, errors include treating a subpoena as equivalent to a court order and producing records without verifying satisfactory assurances, disclosing SUD records without the required Part 2 court order, and failing to involve compliance officers or legal counsel before any records leave the building. Each of these missteps can independently trigger the full range of penalties described above.

## What You Should Do Now

Do not wait for the next subpoena to arrive. Contact your legal counsel immediately to evaluate whether your current subpoena response procedures are adequate, particularly with respect to the subpoena-versus-court-order distinction and the heightened requirements of Part 2. The consequences of noncompliance fall on the provider, not on the party that issued the subpoena.

This article is general in nature and does not constitute legal advice. If you have legal questions, please consult any of the authors: John Neyens (816.265.4152; jneyens@sb-kc.com), John Fuchs (816.265.4228; jfuchs@sb-kc.com), Colby Stone (816.265.4162; cstone@sb-kc.com), or your regular contact at Seigfreid Bingham at 816.421.4460.

Seigfreid Bingham is pleased to announce that 15 attorneys have been selected for inclusion in the 2027 edition of *The Best Lawyers in America.* The 2027 edition marks the publication's 33rd year of recognizing outstanding attorneys nationwide.

In addition, two Seigfreid Bingham attorneys received the distinguished "Lawyer of the Year" designation, awarded to a single attorney in a specific practice area and metropolitan region who receives the highest overall peer-feedback ratings. Stephen M. Kyle was named 2027 Kansas City "Lawyer of the Year" for Real Estate Law, and John M. Neyens was named 2027 Kansas City "Lawyer of the Year" for Health Care Law.

Best Lawyers recognizes attorneys through a rigorous peer-review process. The 2027 edition honors approximately 81,620 lawyers across 151 practice areas nationwide, representing about 5% of practicing attorneys and based on 3.8 million peer evaluations submitted during this year's review cycle.

The following Seigfreid Bingham attorneys were recognized in their respective practice areas:

**Lori Beam**

- Health Care Law

**Gordon D. Gee**

- Commercial Litigation

- Litigation – Securities

**Gregory S. Gerstner**

- Construction Law
- Litigation – Construction
- Real Estate Law

**Mark H. Gilgus**

- Corporate Law
- Tax Law
- Trusts and Estates

**Ellen S. Goldman**

- Collaborative Law: Family Law

**Brenda G. Hamilton**

- Commercial Litigation
- Litigation – Labor and Employment
- Mass Tort Litigation / Class Actions – Defendants

**Heath Hoobing**

- Tax Law

**Shannon C. Johnson**

- Commercial Litigation
- Litigation – Labor and Employment

**Stephen M. Kyle**

- Mergers and Acquisitions Law
- Real Estate Law ("Lawyer of the Year")

**Jonathan A. Margolies**

- Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law
- Litigation – Bankruptcy

**Daniel L. McClain**

- Commercial Litigation

**Cindy A. McClannahan**

- Tax Law
- Trusts and Estates

**John M. Neyens**

- Health Care Law ("Lawyer of the Year")
- Labor Law – Management

**Frederick H. Riesmeyer II**

- Commercial Litigation
- Ethics and Professional Responsibility Law

**John A. Vering III**

- Arbitration
- Employment Law – Individuals
- Employment Law – Management
- Labor Law – Management
- Litigation – Labor and Employment

To learn more, please click here.

**By: Kenzie Clark**

On April 3, 2026, Kansas Governor Laura Kelly signed Senate Bill 55 (SB 55), which prohibits the assignment of post-loss benefits under residential property insurance policies.  Effective as of July 1, 2026, contractors cannot solicit or accept the assignment of any insurance policy or benefit belonging to a client or receive any insurance payout directly. In the bill's words, such practices are "considered to be against public policy," and "null and void."

SB 55 was enacted to protect consumers from the illegitimate repairs and inflated prices caused by bad actors in the roofing industry. It targets roofers and contractors who insert themselves into the insurance process through assignment agreements. "Assignment agreement" is defined in the bill as any instrument by which post-loss benefits under a residential property insurance policy are assigned, transferred, or otherwise acquired, in whole or in part, to or from a person providing services, including but not limited to inspecting, protecting, repairing, or replacing the property, or mitigating against further damage to the property.

Notably, the bill's definition of assignment agreement includes Assignment of Benefits (AOB) forms, the use of which now constitutes an unfair and deceptive practice. The bill is silent on negotiations with insurance carriers or adjusters.

**Penalties for Violation of SB 55**

Parties found in violation of SB 55 may be exposed to additional penalties beyond the assignment itself being void. Violations will be treated as unfair or deceptive business practices and subject to investigation by the Insurance Commissioner. Penalties may include any or all of the following:

1. Payment of up to $1,000 for each violation, not to exceed an aggregate of $10,000, unless the party knew or reasonably should have known that its conduct constituted a violation, in which case the payment may increase up to $5,000 per violation;
2. Suspension or revocation of the party's license, if the party knew or reasonably should have known that its conduct constituted a violation; and
3. A refund of any premiums paid by, or the payment of any monies withheld from, any consumer, including interest, together with appropriate public notification of the violation.

Finally, in the event the Insurance Commissioner elects to conduct a hearing, the party who committed the violation may be responsible for costs incurred as a result of the hearing, including but not limited to, witness fees, mileage allowances, and the costs of reproducing documents.

**What This Means for Contractors**

Contractors should be aware that any AOB forms or AOB provisions in preexisting contracts will likely be considered a violation of Kansas Law under this new bill. While the assignment may be considered null and void, the agreement may still be enforceable. We recommend that contractors consult legal counsel to ensure that their current practices and forms comply with the statute in its current form.

We will continue to monitor any upcoming developments or changes to the enforceability of such assignment agreements and to this area of law.

*This article is general in nature and does not constitute legal advice. If you have legal questions, please consult the author Kenzie Clark (kclark@sb-kc.com) at 816-265-4142 or any of the other attorneys in Seigfried Bingham's Construction Group, including Julie Parisi (jparisi@sb-kc.com) 816-265-4259, Cody Weyhofen (cweyhofen@sb-kc.com) 816-265-4163, or your regular contact at Seigfreid Bingham at 816-421-4460.*

On February 25, 2026, the Kansas State Board of Healing Arts and Board of Pharmacy issued a significant new joint statement addressing the rapidly growing IV hydration and medical spa (medspa) industry. The **Kansas State Board of Healing Arts** and the **Kansas Board of Pharmacy** released this advisory in response to increasing complaints involving IV therapy services, including allegations of *"out?of?scope practice, delegation of medical treatments to unqualified individuals, unauthorized compounding… and the unlicensed practice of the healing arts and pharmacy."*

Although the statement is not a legally binding regulation, it signals the Boards' enforcement priorities and outlines expectations for any business offering IV hydration or vitamin infusion services in Kansas. Kansas medspas and clinics offering IV hydration services should review the statement and consider conducting an internal audit to identify and correct any practices that are not in line with current laws and regulations.

## Highlights of the Boards' Joint Statement

1. **IV Therapy Is the Practice of the Healing Arts**

The Boards emphasize that any intravenous administration of drugs—including saline, vitamins, minerals, amino acids, and other additives— *"indisputably constitutes the practice of healing arts."*

2. **Strict Limits on Who May Administer IV Therapy**

The statement makes clear that only individuals with prescriptive authority may administer IV products. This is a significant tightening of expectations for many IV hydration clinics.

3. **Compounding Rules Apply to IV "Cocktails"**

The Boards take the position that mixing additives into saline constitutes the act of drug compounding. This restriction implicates medspas that prepare IV bags (e.g., combining vitamins with saline bags) on?site without a pharmacist or physician performing or supervising the compounding process.

4. **Pre?Set Menus Are Not Valid Prescriptions**

Many IV hydration businesses rely on pre?approved “menus” of IV cocktails. The Boards warn that they view this practice as non?compliant. As stated, *“A patient may not self?prescribe IV products… Prescriber involvement cannot be obviated by letting the patient direct their own care.”*

Seigfreid Bingham’s health care lawyers will continue to monitor developments in this area and stand ready to assist clients with advice on the current medspa regulatory landscape. This article is general in nature and does not constitute legal advice. If you have legal questions, please consult either of the authors: Emily Crane (816.265.4175; ecrane@sb-kc.com), Colby Stone (816.265.4162; cstone@sb-kc.com), or your regular contact at Seigfreid Bingham at 816.421.4460.

On February 27, 2026, the United States Department of Labor (DOL) published a proposed rule revising the standards for determining whether a worker is an employee or independent contractor. As you might recall, approximately two years ago, in March 2024, the DOL, under the Biden administration, issued a new rule establishing a more employee-friendly six-factor analysis that businesses could use to determine if a worker was an employee or independent contractor. See our client alert from January 19, 2024, here. This Biden DOL rule replaced a 2021 Trump DOL rule that made it easier to classify workers as independent contractors. The new Trump DOL Proposed Rule essentially reinstates the 2021 Trump DOL Rule.

**Highlights of the 2024 Biden DOL Six-Factor Rule**

The 2024 Rule, under the Biden administration, essentially formalized long-standing case law applying a six-factor test (note: some states use a similar five-factor test) to determine whether a worker should be classified as an independent contractor or an employee. Those factors are:

1. Whether the worker has an opportunity to earn profits or suffer losses depending on the worker’s own managerial skill.
2. The relative investments made by the worker and the employer.
3. The degree of permanence of the working relationship.
4. The nature and degree of control by the employer over the work.
5. Whether the work performed is an integral part of the employer’s business.
6. Whether the worker uses specialized skills and initiative to perform the work.

**Highlights of the 2026 Trump DOL Proposed Rule**

1. Adopts an “economic reality” test to determine a worker’s status as an employee or independent contractor, examining whether a worker is in business for him- or herself (independent contractor) or is economically dependent on a potential employer for work (employee);
2. Identifies and explains two “core factors”: (1) the nature and degree of the worker’s control over the work; and (2) the worker’s opportunity for profit or loss based on initiative and/or investment, that federal courts primarily consider to answer the question of whether a worker is economically dependent on someone else’s business or is in business for him- or herself;
3. Identifies three other factors relevant to the analysis, particularly when the two core factors do not point to the same classification: (1) the amount of skill required for the work; (2) the degree of permanence of the working relationship between the worker and the potential employer; and (3) whether the work is part of an integrated unit of production; and also notes that additional factors may be considered in the analysis;
4. Advises that the parties’ actual practices are more relevant than what may be contractually or theoretically possible; and

5. Provides eight examples of how the economic reality factors would apply in certain real-life situations.

**Significance of the 2026 Trump DOL Proposed Rule**

1. In light of a ruling by the U.S. Supreme Court in *Loper Bright Enterprises v. Raimondo*, holding that courts can use their own analysis in construing statutes and that they need not defer to agency interpretations of ambiguous statutes, and given the DOL's flip flops on when a worker is an employee or independent contractor, it remains to be seen if the new Trump DOL Rule will change the result of very many cases where the issue involved is deciding whether a worker is an employee or independent contractor.
2. The 2026 Trump DOL Proposed Rule applies to the federal Fair Labor Standards Act (federal wage and hour laws), the Family and Medical Leave Act, and the Migrant and Seasonal Agricultural Worker Protection Act. However, bear in mind that there are other federal laws (including but not limited to the IRS laws) that have different tests for when a worker is an employee as opposed to an independent contractor. Moreover, most states have their own laws governing when a worker is an independent contractor, and some of those state laws are more employee-friendly than the 2026 Trump DOL Proposed Rule. Thus, caution should be exercised in determining whether an employee is actually an independent contractor.
3. Even if all courts do not follow the 2026 Trump DOL Proposed Rule, that Rule (when it becomes final – it is not the law yet) may provide protection to employers sued for misclassifying employees as independent contractors because under 29 U.S.C. 259, no employer shall be subject to liability or punishment for federal FLSA wage and hour violations if an omission was in good faith and based on a U.S. Wage and Hour Division regulation that has been relied upon by the employer.

Seigfreid Bingham's employment lawyers will continue to monitor developments in this area and stand ready to assist its clients with advice on worker classification issues. This article is general in nature and does not constitute legal advice. If you have legal questions, please consult the authors: John Vering (816.265.4109; jvering@sb-kc.com) and Shannon Johnson (816.265.4139; sjohnson@sb-kc.com), or your regular contact at Seigfreid Bingham at 816.421.4460.

**By: Katie Conklin and John Vering**

**Background**

As we explained in our previous client alert, on November 5, 2024, Missouri voters approved Proposition A by over 57%, which increased the Missouri Minimum Wage to $13.75, effective January 1, 2025, and increased it to $15.00 per hour, effective January 1, 2026. Thereafter, Proposition A provided that the Missouri Minimum Wage would be adjusted annually based on the Consumer Price Index. Further, Proposition A required that most Missouri non-governmental employers provide one hour of paid sick leave for every 30 hours worked, effective May 1, 2025. Proposition A also required that Missouri employers post and send a notice regarding paid sick leave to employees by April 15, 2025.

**Repeal of Missouri Paid Sick Leave**

As we explained in our client alert on May 16, 2025, on May 14, 2025, the Missouri Senate passed Missouri House Bill 567 (HB 567) which effectively repealed Missouri Paid Sick Leave, effective August 28, 2025, when HB 567 was signed by Governor Mike Kehoe on July 10, 2025.

**Amendments to Missouri Minimum Wage Law**

HB 567 does not change Proposition A's increase of the Missouri minimum wage to $13.75 per hour effective January 1, 2025 and its further increase to $15.00 per hour effective January 1, 2026. However, HB 567 did repeal the portions of Proposition A that required mandatory adjustments to the minimum wage based on the Consumer Price Index, which were set to begin on January 1, 2027 and continue each January 1 in successive years.

HB 567 also amended the Missouri Minimum Wage Law to specify that, as of August 28, 2025, public employers (the State of Missouri, political subdivisions of the State of Missouri, including a department, agency, officer, bureau, division, board, commission, or instrumentality of the state or a city, county, town, village, school district, or other political subdivision of the state) would also be required to pay the Missouri minimum wage.

**What Employers Should Do**

Non-governmental employers need to comply with Missouri's Paid Sick Leave law until August 28, 2025, including tracking paid sick leave that employees accrue and use. We are prepared to assist Missouri employers with advice regarding compliance with Proposition A and how to handle sick leave and PTO policies in light of this legislative change. There are not only legal issues but also employee relations issues to be considered, including how to communicate these changes in the law and shifting paid sick leave law requirements in the middle of the year.

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**By: John Vering and John Neyens**

**Nebraska Legislature Amends Paid Sick Leave Requirement**

In November of 2024, Nebraska voters approved Initiative 436 which adopts the Nebraska Healthy Families and Workplaces Act which provides paid sick leave to most non-governmental employees. On June 4, 2025, Nebraska Governor Jim Pillen signed LB415 which made some significant changes to the Act which becomes **effective October 1, 2025**.

**Who is Covered?**

The Act applies to employees who work in Nebraska for at least 80 hours in a calendar year, except that it does not cover seasonal and temporary workers employed in agriculture, employees under age 16, employers with fewer than 11 employees, employees covered by the federal Railroad Unemployment Insurance Act, or employees of federal or state agencies, state departments, and political subdivisions.

**Accrual and Use Rules**

Under the Act, employees are entitled to a minimum of one hour of paid sick leave for every 30 hours worked up to a cap (40 or 56 hours depending on the employer's size). Employers with 11-19 employees must provide up to 40 hours of PSL per year. Employers with 20 or more employees must provide up to 56 hours of PSL per year. Employees exempt from overtime are presumed to work 40 hours per week unless their typical workweek is less than 40 hours per week. PSL provided to an employee on or after January 1, 2025 and before October 1, 2025 shall be counted toward an employer's obligations under the Act for calendar year 2025.

**Carryover Requirements and Frontloading Option**

Employers must allow employees to carry over unused PSL to the next year. Alternatively, employers are permitted to pay an employee for unused sick time at the end of the year and frontload the employee at the beginning of the year with the amount of PSL (40 or 56 hours) specified in the preceding paragraph depending on the number of employees. Employers also have the option to loan PSL to an employee is advance of accrual by such employee.

**Integration with Existing PTO Policies**

Most employers offer some kind of vacation, sick leave, and/or PTO policies. Employers with PTO policies that provide an annual amount of PTO sufficient to meet the requirements of Nebraska's new PSL law, including allowing PTO to be used for the same purposes and under the same conditions as provided in the new PSL law, are not required to provide additional PSL benefits beyond those provided in existing PTO policies. However, employers may be required to re-write some of their PTO policies to ensure that existing PTO policies are properly integrated with Nebraska's new PSL law and include appropriate provisions for employees to provide notice of the need to use PSL. The Act does not require payment for unused PSL when an employee separates from the employer.

**PSL May be Used for Many Reasons**

PSL may be taken for:

- Care of self for mental or physical illness, injury, health condition, medical diagnosis or preventative care or treatment; or
- Care of a family member for mental or physical illness, injury, health condition, medical diagnosis or preventative care or treatment or in the case of a child, to attend a meeting necessitated by the child's mental or physical illness, injury or health condition, at a school or place where the child is receiving care; or
- In a public health emergency where the employee's place of business or the child's school or place of care is closed or where the employee needs to care for oneself or a family member where health authorities or a health care provider determines that the family member's presence in the community may jeopardize the health of others by potentially exposing them to a communicable disease, whether or not the employee or family member has actually contracted the disease.

The definition of "family member" is extremely broad and includes, regardless of age, biological, adopted or foster child, stepchild, legal ward, and/or a child to whom the employee stands in loco parentis.

"Family member" also includes biological, foster, stepparent or adoptive parent or legal guardian of the employee or an employee's spouse or an individual who stood in loco parentis when the employee or employee's spouse was a minor child, an individual to whom the employee is legally married or a grandparent, grandchild, or sibling, whether of a biological, foster, adoptive, or step relationship with the employee or the employee's spouse. Family member also includes any other individual related by blood to the employee or whose close association with the employee is the equivalent of a family relationship.

**Employee Notice Requirements**

The Nebraska PSL statute specifies that PSL shall be provided upon oral request of the employee, but for paid sick leave for more than three consecutive work days, the employer may require reasonable documentation that the paid sick leave was used for a purpose covered by the Act.

**Employer Notice and Record Keeping-Requirements**

**The Act requires that employers provide written notice to employees of their rights under this new law upon commencement of employment or September 15, 2025, whichever is later.** Employers are also required to display a poster regarding Nebraska PSL. We expect the Nebraska Department of Labor to publish a model notice for employers to use along with a form of poster that employers are required to post, but to date, the Nebraska Department of Labor has not done so. Employers must provide or make available to employees each pay period information on the amount of PLS available and taken and the amount of pay received for PSL.

**Guidance from Nebraska Department of Labor**

The Nebraska Department of Labor (NDOL) issued Revised Answers to Frequently Asked Questions on June 9, 2025 FAQs Paid Sick Leave.pdf and may issue additional guidance in the future.

**Legal Liability for Failing to Comply with Nebraska Paid Sick Leave Law**

*In a significant change to the Act, LB451 removes an employee's right to file a lawsuit if an employer violates the Act. Employees can file complaints with the Nebraska Dept. of Labor which will investigate complaints that an employer failed to comply with the Act and can fine offending employers who violate the Act up to $500 for the first violation and up to $5,000 for the second and any subsequent violation of the Act. This article is general in nature and does not constitute legal advice. Readers with legal questions or desiring assistance in reviewing or amending employment policies to comply with Neabrask's paid sick leave law should consult the authors, John Vering (jvering@sb-kc.com) and John Neyens (jneyens@sb-kc.com) or other members of the Seigfreid Bingham's Employment Law Group, including Shannon Cohorst Johnson (sjohnson@sb-kc.com), Mark Opara (mopara@sb-kc.com), Katie Conklin (KConklin@sb-kc.com), or your regular contact at Seigfreid Bingham at 816.421.4460.*

**By: Katie Conklin and John Vering**

**Background**

As we explained in our previous client alert, on November 5, 2024, Missouri voters approved Proposition A by over 57%, which increased the Missouri Minimum Wage to $13.75, effective January 1, 2025, and increased it to $15.00 per hour, effective January 1, 2026. Thereafter, Proposition A provided that the Missouri Minimum Wage would be adjusted annually based on the Consumer Price Index. Further, Proposition A required that most Missouri non-governmental employers provide one hour of paid sick leave for every 30 hours worked, effective May 1, 2025. Proposition A also required that Missouri employers post and send a notice regarding paid sick leave to employees by April 15, 2025.

On April 29, 2025, the Missouri Supreme Court issued a decision rejecting challenges to Proposition A. A summary of the decision may be found on the Court's website here.

**Repeal of Missouri Paid Sick Leave**

On May 14, 2025, the Missouri Senate passed Missouri House Bill 567 (HB 567) which will effectively repeal Missouri Paid Sick Leave, effective August 28, 2025, if signed by Governor Mike Kehoe. We expect the Governor to sign this bill, but if he does not, we will supplement this Client Alert.

**Amendments to Missouri Minimum Wage Law**

HB 567 does not change Proposition A's increase of the Missouri minimum wage to $13.75 per hour effective January 1, 2025 and its further increase to $15.00 per hour effective January 1, 2026. However, HB 567 did repeal the portions of Proposition A that required mandatory adjustments to the minimum wage based on the Consumer Price Index, which were set to begin on January 1, 2027 and continue each January 1 in successive years.

HB 567 also amended the Missouri Minimum Wage Law to specify that, as of August 28, 2025, public employers (the State of Missouri, political subdivisions of the State of Missouri, including a department, agency, officer, bureau, division, board, commission, or instrumentality of the state or a city, county, town, village, school district, or other political subdivision of the state) would also be required to pay the Missouri minimum wage.

**What Employers Should Do**

We recommend that non-governmental employers comply with Missouri's Paid Sick Leave law until August 28, 2025.  We are prepared to assist Missouri employers with advice regarding compliance with Proposition A and how to handle sick leave and PTO policies in light of this legislative change. There are not only legal issues but also employee relations issues to be considered, including how to communicate these changes in the law and shifting paid sick time law requirements in the middle of the year.

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**By: John Vering and Katie Conklin**

On April 29, 2025, the Missouri Supreme Court issued a decision rejecting challenges to Missouri Proposition A, which increased the Missouri Minimum Wage and created a requirement that most Missouri employees be entitled to receive paid sick leave. A summary of the decision may be found on the Court's website here.

The Court found that the ballot summary and fiscal note summary for Proposition A, which appeared on the November 2024 election ballot, were not inaccurate or misleading so as to constitute an irregularity casting doubt on the election. As to the claims challenging Proposition A on the basis that it is unconstitutional because it violates the single subject and clear title provisions of the Missouri Constitution in that it deals with two subjects (raising the minimum wage and creating paid sick time), the Court found that it did not have jurisdiction to decide that question and dismissed these claims without prejudice, meaning a trial court will need to issue a decision on the claims, which could then be appealed. This process would take many months.

The bottom line is that the Missouri Supreme Court did not stop Proposition A from taking effect.

It is our understanding that the prospects of the Missouri Legislature passing a repeal or revision to Missouri Paid Sick Leave that would take effect by Proposition A's May 1, 2025 effective date are slim but not impossible.

Therefore, we recommend that Missouri employers (1) plan to comply with Proposition A's May 1, 2025 effective date and (2) be prepared to publish their policies on Missouri's Paid Sick Time within the week following May 1, 2025 in case there is a last-minute legislative repeal.

### Background

As we explained in our previous client alert, on November 5, 2024, Missouri voters approved Proposition A by over 57%, which increased the Missouri Minimum Wage to $13.75, effective January 1, 2025, and will increase it to $15.00 per hour, effective January 1, 2026. Thereafter, the Missouri Minimum Wage will be adjusted annually based on the Consumer Price Index. Further, Proposition A requires that most Missouri non-governmental employers provide one hour of paid sick leave for every 30 hours worked, effective May 1, 2025. Proposition A also requires that Missouri employers post and send a notice regarding paid sick leave to employees by April 15, 2025. On March 19, 2025, we published another client alert with an update on the litigation challenging Proposition A and potential legislative changes to Proposition A.

We are prepared to assist Missouri employers with advice regarding compliance with Proposition A. We will continue to monitor the latest developments, guidance, and legal requirements in this area of law.

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**By: John Vering and Shannon Johnson**

The Kansas Legislature has amended its Restraint of Trade Act effective July 1, 2025, to create some conclusive presumptions regarding when non-solicit agreements are enforceable and to require that courts reform overly broad non-solicit agreements. These changes are contained in Senate Bill 241, which amends KSA 50-163. These amendments are both significant and very employer-friendly. However, it should be noted that this new law applies only to non-solicit agreements and not to non-compete agreements. As many of you know, a non-solicit agreement prevents an employee from soliciting customers to move their business to a new company and can prevent an employee from soliciting employees to leave their employer. A non-compete agreement is broader and prevents an employee from going to work for a competitor.

#### What types of Non-Solicit Agreements are Conclusively Presumed to be Enforceable?

Although Senate Bill 241 goes into greater detail regarding what types of non-solicitation agreements are conclusively presumed to be enforceable and not a restraint of trade, the general types of agreements covered are the following

*1. Agreements Between a Business Entity and a Business Owner or Seller.*

Written agreements between a business entity and a business owner or seller of a business (or part of a business) not to solicit or encourage employees or other owners of the business to leave the business are enforceable if the agreement's duration does not continue for more than four years following the end of the business owner's business relationship with the business entity.

Written agreements by a business owner or seller of a business (or part of a business) not to solicit or encourage customers to terminate business with that business or reduce or transfer business to a competitor are enforceable, but only if the agreement is limited to "material contact customers" (defined at paragraph 3 below) and if the agreement's duration does not continue for more than four years following the end of the business owner's business relationship with the business entity.

Written agreements in which an owner agrees to provide prior notice of the owner's intent to terminate, sell, or otherwise dispose of his/her ownership interest in the business are conclusively presumed to be enforceable and not a restraint of trade.

*2. Agreements Between a Business Entity and its Employees*

A written agreement between a business entity and an employee not to solicit or encourage a business owner or another employee to leave the business is enforceable if:

- The agreement seeks to protect confidential or trade secret information or customer or supplier relationships, goodwill or loyalty; or
- The agreement restriction does not continue for more than two (2) years following the end of the employee's employment with the business entity.

Written agreements by an employee not to solicit or encourage customers to terminate business with the employer or reduce or transfer business to a competitor are enforceable if the agreement is limited to "material contact customers" and if the agreement's duration does not continue for more than two years following the end of the employee's employment with the employer.

*3. "Material Contact Customers"*

A "Material Contact Customer" means any customer or prospective customer that is solicited, produced, or serviced, directly or indirectly, by the employee or the business entity, or any customer or prospective customer about whom the employee or the business entity, directly or indirectly, had confidential business or propriety information or trade secrets in the course of employee's or business's relationship with the customer.

**Mandatory Reformation of Overbroad Non-Solicit Agreements**

Another major change in Kansas law by Senate Bill 241 is a provision that requires the court to modify overbroad or unreasonable non-solicit agreements (i.e., agreements that are not presumed to be enforceable), to narrow them to the extent necessary to make them enforceable.  This change is significant because in the past the court has had the option to either modify/narrow an overbroad non-solicit agreement to make it enforceable or refuse to enforce an overbroad non-solicit agreement and reject the entire document.

**Other Provisions of Senate Bill 241**

Senate Bill 241 contains a provision providing that, notwithstanding the presumption of enforceability of the non-solicit agreements described above, "an employee or owner shall be permitted to assert any applicable defense available at law or in equity for the court's consideration in a dispute regarding a written covenant."  How Kansas Courts will interpret this provision is at this point uncertain.  Presumably, an employee could still defend a claim that there was a violation of a non-solicit agreement by arguing that the company breached the agreement first, that the employee was induced to sign it by fraud or duress, or that there was insufficient consideration, or some other legal or equitable defense.  Also, note that Senate Bill 241 does not cover non-solicit provisions in franchise agreements or agreements with independent contractors, and does not address non-compete agreements.

**What This Means for Employers and Employees**

This Senate Bill 241 is a reminder that whether a non-compete, non-solicit, or non-disclosure agreement is going to be enforced depends on the law of the state where the employee works and the exact wording of the agreement.  While Senate Bill 241 is employer friendly, many state legislatures are adopting or have adopted employee friendly laws regulating non-compete, non-solicit and non-disclosure agreements. For example, Colorado, Oklahoma, and Nebraska have more employee-friendly non-compete and/or non-solicit laws than Kansas has. Some states restrict which employees can be bound by non-compete, non-solicit, or non-disclosure agreements, and some states expressly prohibit an employer from providing that the agreement will be governed by the law of any state other than the state where the employee works and resides.

We recommend that you have an experienced employment lawyer review your current non-compete, non-solicit, and non-disclosure agreements for legal compliance. We also recommend that you strongly consider modifying your non-solicit agreements for employees working in Kansas so that they include the special language set forth in the amended statute which is required to make those agreements "conclusively presumed to be enforceable". In addition to revising non-solicit agreements for new employees, you should discuss with counsel whether to modify non-solicit agreements with current employees and, if so, what consideration might be required to make those new agreements legally enforceable. Finally, you should discuss whether you need non-compete and non-disclosure provisions to supplement non-solicitation provisions in your agreements and whether different agreements might be appropriate for different classes of employees. For example, production workers with knowledge of trade secrets but no customer contacts might only need a non-disclosure and agreement not to solicit co-workers, while the agreement for a sales employee would also need an agreement not to solicit customers, and the agreement for senior executives might need not only comprehensive non-disclosure and non-solicitation provisions but also a non-compete provision.

For employers with employees in multiple states, we recommend you discuss recent changes in other state laws relating to your non-compete, non-solicit, and non-disclosure agreements with your attorney, because as noted above, there have been recent changes in many states which may affect your ability to enforce your agreements.

Please feel free to contact us if you need assistance reviewing your non-compete, non-disclosure, and/or non-solicit agreements for legal compliance.

*This article is general in nature and does not constitute legal advice. If you have legal questions, please consult the authors, John Vering (jvering@sb-kc.com) at 816.265.4109 and Shannon Cohorst Johnson (sjohnson@sb-kc.com) 816.265.4139 or other attorneys in Seigfreid Bingham's Employment Law Group, including: John Neyens (johnn@sb-kc.com) 816.265.4152, Brenda Hamilton (bhamilton@sb-kc.com) 816.265.4103, Mark Opara (mopara@sb-kc.com) 816.265.4140, Julie Parisi (jparisi@sb-kc.com) 816.265.4159, Katie Conklin (kconklin@sb-kc.com) at 816.265.4114, Cody Weyhofen (cweyhofen@sb-kc.com) 816-265-4163, or Chris Tillery (ctillery@sb-kc.com) at 816-265-4157 or your regular contact at Seigfreid Bingham at 816.421.4460.*