



Employment Agreements: Best Practices for Using Non-Competes, NDAs, and Other Protective Clauses

Agenda for today

1 Current state of non-compete law

2 Recent federal and state non-compete law updates

3 Alternatives to non-competes

Today's webinar is being recorded! You will receive the recording + a copy of the slides at the email you used to register.

Which state's laws govern your employment relationships?

Lawyer answer: it depends

General rule: the law of the state where the employee works

Bottom line: One-size-fits-all agreements are risky because state laws vary, especially around non-competes

Common “Protective Clauses”

Non-Competition

Prevents employees from working for competitors after separation

Provides the most protection for employers

But are increasingly disfavored in state law

Risk of penalties if not carefully constructed

Non-Solicitation

Prevents employees from soliciting customers or other employees after separation

Different kind of protection than non-competes

Still somewhat disfavored in state law

Highly dependent on circumstances to be useful

Non-Disclosure

Prevents employees from disclosing confidential information after separation

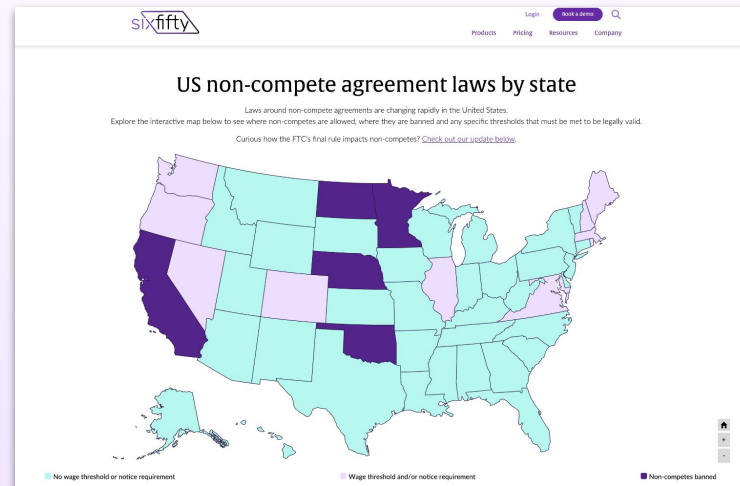
Provides narrow protection for employers

Less disfavored than other types

Can be highly effective when well-tailored

Non-competes governed by patchwork of state law

- No federal regulation, except in limited circumstances
- All states that allow non-competes require them to be reasonable in their limitations.
- Notice requirements in 8 states and D.C.
- Income thresholds in 11 states and D.C.
- Banned in 4 states:
 - Statutory ban in CA, OK, ND, and MN
 - NE has a functional, common law ban



Visit our free, interactive non-compete map

What makes a non-compete “reasonable”?

Factors courts often consider when determining reasonability:

Duration

**Geographic
Scope**

**Scope of
Activity**

**Protectable
Interests**

**Public
Interest**

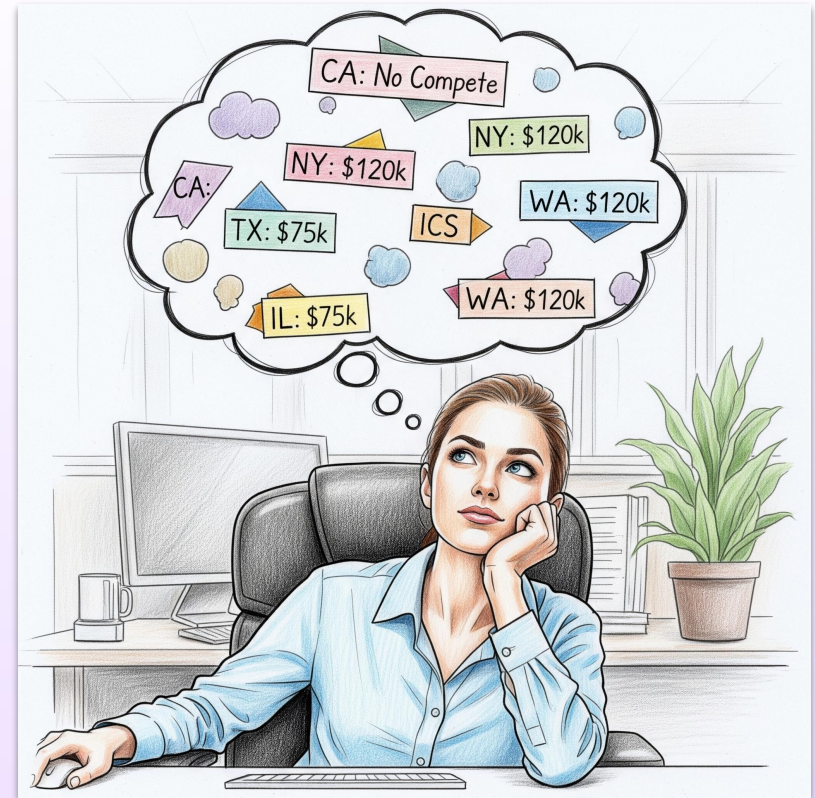
Income thresholds

Can be based on:

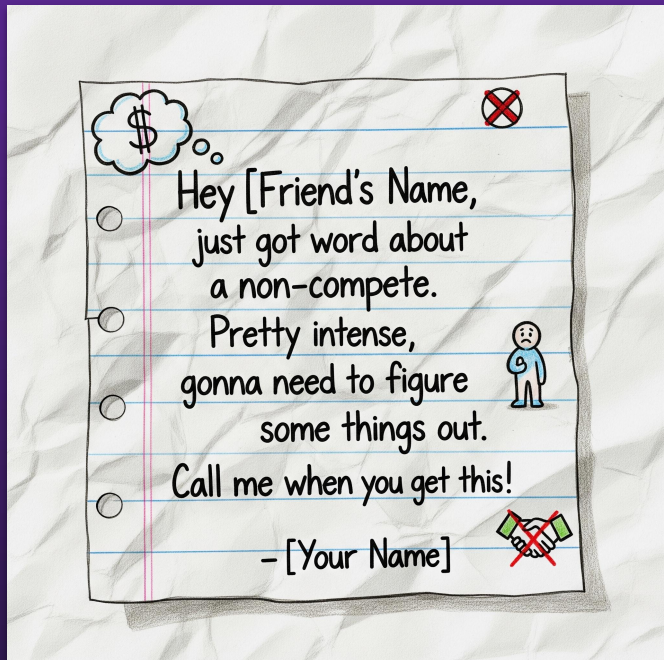
- Consumer Price Index (OR, DC)
- Federal poverty level (ME, RI)
- State average income (MD)
- State minimum wage (VA)
- Other state law (CO, OR)

Usually applies to non-competes, but non-solicits sometimes covered.

- Threshold may be different (60% of the non-compete threshold in CO)



Notice requirements



Timing is relatively consistent across states

- Before making offer for new employees and ~14 days before being required to sign for current employees satisfies all states
- OR requires another notice on separation

Content can vary

- Copy of agreement
- Location of protective clause
- Potential effect of protective clause
- Advice to consult attorney

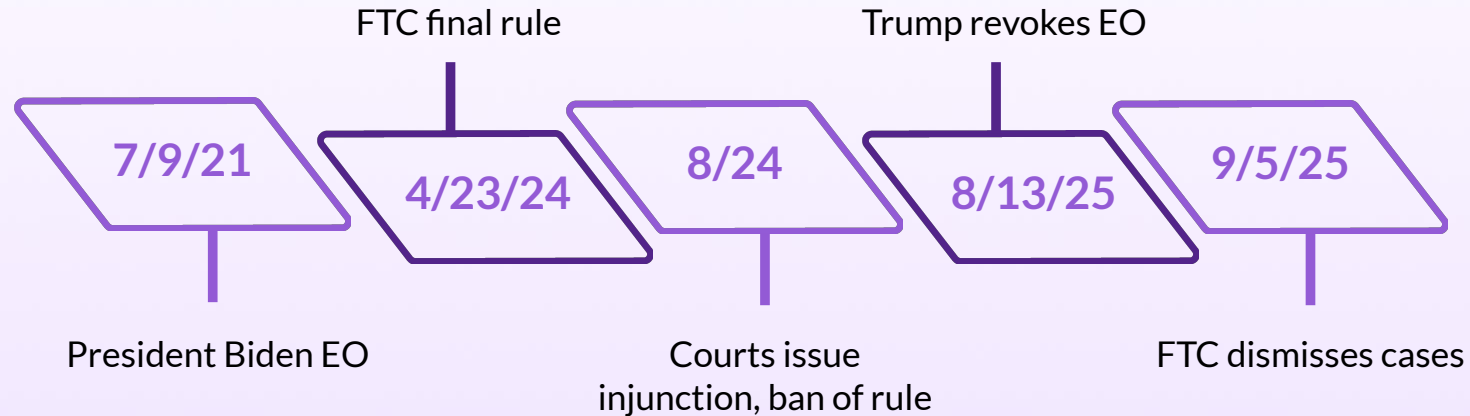
Sometimes required for non-solicits and even NDAs as well as non-competes

FTC Dismisses Noncompete Appeals

September 5, 2025

What does this mean?

FTC Rule Timeline



Congressional Activity

Conrad State 30 and Physician Access Reauthorization Act

- Introduced in the House
- Prohibits non-competes with certain physicians working in rural and underserved areas



State Updates - Major

July 1 - Wyoming bans all non-competes except with “executive or management” employees

July 3 - Florida CHOICE Act is enacted

- “We love non-competes”
- Non-competes and garden leave agreements valid for up to 4 years
- Can enjoin new employer

State Updates - Buckets

Most recent changes to state non-compete and non-solicitation law can be broken into three different buckets.

Threshold Changes (1/1)

Colorado

D.C.

Maine

Maryland

Oregon

Rhode Island

Washington

Medical Professionals

Arkansas: Physicians (8/3)

Colorado: Most medical professionals (8/6)

Indiana: Physicians (7/1)

Louisiana: Physicians only in 1st 3 years (1/1)

Maryland: Physicians making over \$350k (7/1)

Montana: Some nurses, PAs, & naturopathic physicians (4/16)

Pennsylvania: Most medical professionals (1/1)

Texas: Most medical professionals (9/1)

Expansion / Clarification

Illinois: Extends protection to all construction workers (not just union members) (1/1)

Kansas: Presumption of enforceability for non-competes (7/1)

Virginia: Virginia clarifies that “low-wage” = non-exempt (7/1)

Risks of violating non-compete laws



- Void non-competes
- Civil penalties
- Expensive litigation
- Enforcement actions



How can employers protect themselves without non-competes?

Scenario: You hire Jeff to lead your sales team in the Western Region. He works closely with customers, partners, suppliers, and other employees. You share the unique process behind your product and invest a large part of your training budget to send Jeff to sales training.

Six months later, Jeff leaves to become head of sales at your biggest competitor. What protections can you use if a non-compete isn't an option?



Employers that don't use non-competes can protect themselves with other types of agreements.

Non-Solicitation
Agreements

Non-Disclosure
Agreements

Training
Repayment
Agreement
Provisions
(TRAPS)

Non-Solicitation Agreements

- Can be used to keep former employees from soliciting your customers, employees, partners, and suppliers.
- There are fewer limitations on non-solicitation agreements than there are on non-compete agreements.
 - Must still be reasonable in time limit
 - Colorado and Illinois have put salary limitations on non-solicitation agreements.

Non-Disclosure Agreements

- Can be used to help prevent former employees from disclosing your company's confidential and proprietary information.
- Federal law prohibits employers from using NDAs to prevent employees and former employees from disclosing information about sexual harassment and sexual assault.
- Some states prohibit employers from using NDAs to prevent employees from disclosing information about any type of discrimination or unlawful activity.

Training Repayment Agreement Provisions (TRAPs)

- Can be used to require employees to repay the cost of training if they leave a company within a designated period of time.
- TRAPS can be regulated by state law.
 - **Example:** California law prohibits an employer from requiring a worker to repay training costs unless the training is (1) necessary to legally practice the profession at issue, or (2) undertaken by the worker voluntarily and not employer-mandated.
- TRAPS can appear heavy handed.

BIGLAW

Cheapskates At Jones Day Bill Former Associate For Bar Prep

Just because you CAN bill someone doesn't mean you SHOULD.

By JOE PATRICE on December 15, 2022 at 12:53 PM

Source: [Above the Law](#)



Key Takeaways

- The landscape around non-competes is complicated and dynamic.
- Even if you can't or don't want to use non-competes, you may be able to protect your business with well-drafted non-solicitation and non-disclosure agreements.
- Training Repayment Agreement Provisions (TRAPs) are becoming more popular but are also receiving greater scrutiny from regulators and lawmakers.
- Regardless of what agreements you execute, be sure they are narrowly tailored and necessary for your purpose.

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Thank you!