Legal Breakdown:

NDAs, Non-Competes, and Non-Solicitation Agreements

July 16, 2026

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Agenda for today

1. Current state of non-compete law
2. Penalties and alternatives to non-competes
3. Recent federal and state law updates

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?

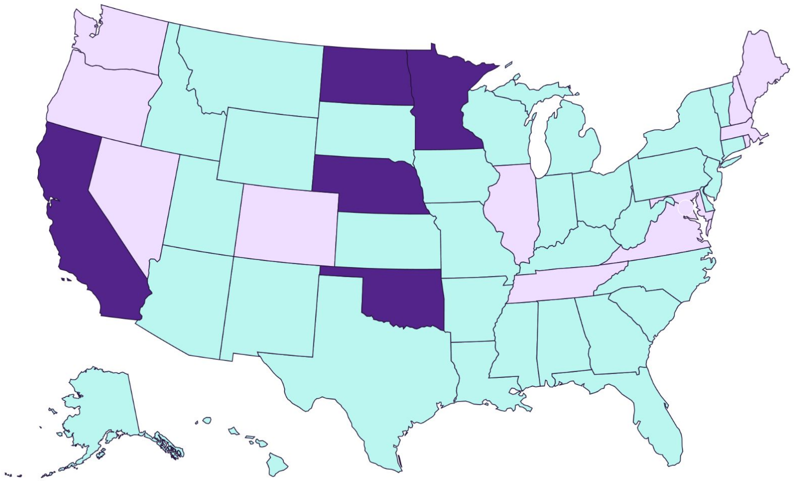
Lawyer answer: it depends

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

Non-competes are governed by a 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 12 states and D.C.
- Banned in 4 states (CA, OK, ND, and MN):
  - NE has a functional, common law ban
  - WA ban effective June 30, 2027



No wage threshold or notice requirement

Wage threshold and/or notice requirement

Non-competes banned

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

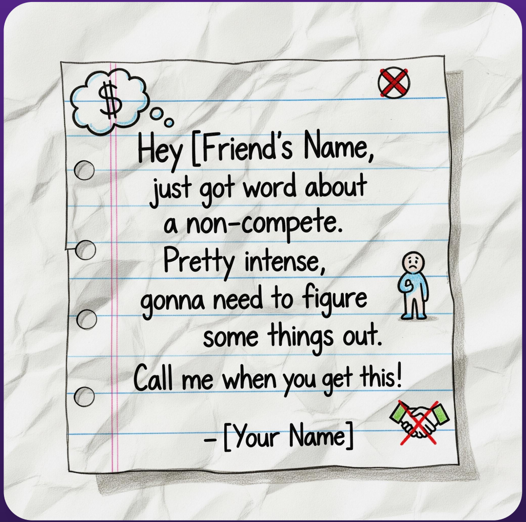
Can be based on:

- 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

Pitfall #1: Relocating employees

Agreements can follow the employee, but you should consider these issues to ensure it stays enforceable:

1. The agreement will be governed by the law of the employee's new state.
2. Some states (CA) void all non-competes, even when signed elsewhere.
3. New notice rules and income thresholds may apply.
4. The new state may have stricter penalties for enforcing (or offering) an unlawful non-compete; and
5. New agreements may require additional consideration to be valid.

Best practices for relocating employees

Know where your employees work: A relocation policy is a good way to ensure employees tell you before they move.

Review the new state's non-compete rules: Income thresholds, notice requirements, "reasonableness" limits, and consideration rules can vary.

Have employees sign a new agreement when necessary: If the terms of the existing non-compete are unlawful in the new state, trying to enforce it could expose you to liability.

Consider including "blue pencil" language: Providing for severability can allow courts to reform non-competes to remove invalid language

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Pitfall #2: Non-competes at separation

When employees sign non-competes at the end of their employment, there are several key differences in the validity analysis employers should keep in mind:

Consideration

The promise of continued employment or access to company information can sustain non-competes signed during the employment relationship, but not at the end.

A severance payment, or something else of value, should be included to ensure end-of-employment non-competes are enforceable.

Protectable Interests

Some states hold that employers have fewer legitimate interests in restricting employees from competing at the end of the relationship. **This results in more scrutiny for end-of-employment non-competes.**

They can still work, but employers may have to meet a higher burden in showing that the non-compete is necessary to protect company information/goodwill.

State Bans

Some states allow non-competes before/during employment, but refuse to enforce them if signed at the end of employment.

Total bans of this sort are rare (e.g. OR), but **several states condition enforcement on the circumstances of separation**; some refuse to enforce (or have higher burdens for) non-competes with employees who are terminated without cause.

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Risks of violating non-compete laws

Void non-competes

Civil penalties

Expensive litigation

Enforcement action

How can employers protect themselves without non-competes?

Scenario: You hire Sarah to lead your sales team in the Western Region. She 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 Sarah to sales training.

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

Three alternatives to non-competes

Employers that don't use non-competes may be able to 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.

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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.

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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

1. The landscape around non-competes is complicated and dynamic.
2. 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.
3. Training Repayment Agreement Provisions (TRAPs) are becoming more popular but are also receiving greater scrutiny from regulators and lawmakers.
4. Regardless of what agreements you execute, be sure they are narrowly tailored and necessary for your purpose.

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Non-Compete Legal Updates

Non-compete agreement: A promise, usually in a sale-of-business, partnership, or employment contract, not to engage in the same type of business for a stated time in the same market.

Washington: A full non-compete Ban

HB 1155

- Every non-compete becomes void and unenforceable starting June 30, 2027—regardless of when it was signed.
- The old earnings threshold is gone; enforcing, threatening to enforce, or even entering into a new non-compete is a violation.
- Employers must notify current and former employees and contractors that their non-compete is dead by October 1, 2027.

Virginia: Severance requirements & judicial expansion

SB 170: Effective as of July 1st, 2026

- Non-competes are only enforceable against no-cause terminations if severance is paid—no exceptions for highly-compensated employees or business sales

Sentry Force Security v. Barrera

- VA Court of Appeals ruled employee non-solicits are functionally non-competes—more in the next section.

Tennessee: New salary threshold

HB 1034: Effective as of July 1st, 2026

- Non-competes can't be enforced against anyone earning less than $70,000 a year.
- Also codifies a time restriction. Common law generally presumed 1 year was reasonable—the new law creates a presumption that 2 years is reasonable.
    - Not a guarantee: 2 years can still be found unreasonable if the employee proves there's no legitimate reason for it to last that long.

Income threshold updates

- **Colorado:** $130,014
  - Non-solicitation agreements - $78,008.40
- **D.C.:** $162,164
  - Physicians: $270,274
- **Maine:** $63,840
- **Maryland:** $46,800
  - Medical professionals providing direct patient care: $350,000
- **Oregon:** $119,541
- **Rhode Island:** $39,900
- **Tennessee:** $70,000 (New)
- **Virginia:** $1,507.01
- **Washington:** $126,858.83

Healthcare & other carve-outs

- **Maine (effective 7/29/26)**: LD 2200 non-competes with healthcare practitioners unenforceable unless the practitioner has an ownership stake; must include a patient-choice clause
- **New Hampshire (effective 7/7/26)**: SB 402 bans non-competes with physician associates—prospective only
- **Utah (effective 5/6/26)**: SB 111 bans non-competes with veterinarians unless they own 5%+ of the practice
- **Utah (effective 5/6/26)**: HB 270 bans non-competes with healthcare workers generally
- **Virginia (effective 7/1/26)**: HB 627/SB 128 bans non-competes with licensed healthcare professionals (medicine, nursing, counseling, optometry, psychology, social work)
- **Louisiana (effective 8/1/26)**: HB 315 bans non-competes with interns & apprentices, paid or unpaid

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Non-Solicitation Legal Updates

Non-solicitation agreement: A legal contract that prohibits one party (usually a departing employee) from recruiting another party's (the former employer's) customers, clients, staff, vendors, or other contacts for a set period once the relationship ends.

Virginia: Employee Non-Solicits = Non-Competes

***Sentry Force Security, LLC v. Barrera*—Virginia Court of Appeals, January 27th, 2026**

- Customer non-solicits are not non-competes—as long as they don't prohibit doing business with customers who leave on their own accord
- Non-solicits for employees and others are functionally non-competes, and must be treated the same way
- Employee/Other non-solicits are only enforceable against someone who:
  - Isn't an attorney or physician;
  - Earns at least $1,507.01 a week; and
  - Actually has access to a protectable interest

Utah: Limits for healthcare workers

SB 111: Effective 5/6/26

- Voids veterinarian non-solicits entirely

HB 270: Effective 5/6/26

- Non-solicits can't stop healthcare workers from telling patients where they're going to be working when they leave

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Non-Disclosure Legal Updates

Non-disclosure agreements (NDAs, also known as confidentiality agreements): Agreements where parties agree that certain information will remain confidential.

Alabama: Trey's Law

SB 30 (Trey's Law): Effective 10/1/26

- Voids any provision in a confidentiality, employment, or settlement agreement that tries to stop someone from disclosing an act of sexual abuse
- Applies to all conduct that would be a criminal violation under Alabama's sexual offense statutes
- Part of a broader trend across states—check whether your standard NDA language is too broad

Utah: Limits with healthcare workers

SB 111: Effective 5/6/26

- Prohibits non-disclosure agreements with veterinarians in which the veterinarian agrees not disclose or discuss their experience working for the employer

TRAP Legal Updates

TRAP agreement (also known as stay-or-pay agreements): A contractual term requiring an employee to pay back training costs, equipment fees, or hiring expenses if they leave their job before a specified period.

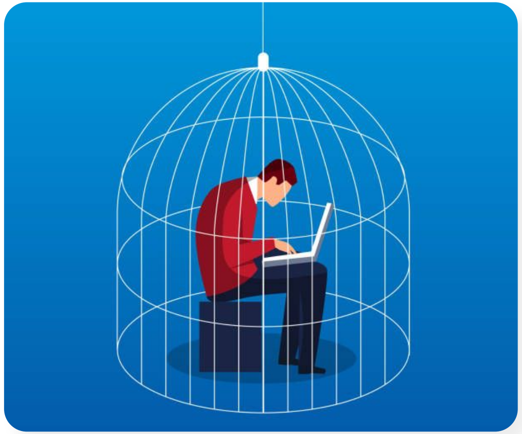
New York: “Trapped At Work Act” amended

AB A584C: Signed 12/19/25

- Original “Trapped At Work Act” banning promissory notes requiring repayment if an employee leaves before a set period

AB A9452: Effective 12/19/26

- Amends AB A584C
- Now applies only to “employees,” not the broader “worker” category (independent contractors are out)
- New exception for tuition tied to transferable credentials, under certain conditions
- Employees can now file a DOL complaint



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Connecticut: Removes employer size restriction

HB 5003: Effective 10/1/26

- Amends existing ban on promissory notes
- Removes the old employer-size exception—now every employer, regardless of headcount, is barred from using promissory-note repayment agreements

California: Ban on TRAPs

AB 692: Effective 1/1/26

- Bans TRAPs / “stay-or-pay” agreements outright:
    - No debt owed on exit
    - No debt collection triggered by exit
    - No penalty or fee tied to leaving
- Narrow loan/tuition exceptions apply

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