The Non-Compete Agreement Landscape in 2025

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While non-compete agreements survived two federal agencies' attempts to ban or deem them invalid in 2024, such provisions remain a legitimate way to protect an employer's interests from unfair competition under federal law. However, 2024 saw more states adopting laws restricting the use of non-competes for lower-paid employees and medical professionals. State courts also issued decisions invalidating non-competes that were overly broad or not supported by adequate consideration.

This means that prudent employers should (1) review the terms of their non-compete provisions to ensure compliance with state laws; (2) consider strengthening agreements to include non-solicitation, anti-raiding, and confidentiality provisions; and (3) be prepared to promptly enforce these agreements when violations happen or risk a court declining to provide certain relief.

This is one of our most-read articles in 2025, by all accounts and metrics. If you're looking for the latest on non-competes, give this a read:* ***2025 Mid-Year Update on Non-Compete Agreements**.*

Two Federal Agencies Took Aim at Non-Competes in 2024 and Missed…For Now

The Federal Trade Commission's (FTC) attempt to ban non-compete agreements failed. In April of 2024, the FTC adopted a rule banning new non-competes and prohibited enforcement of already executed agreements, with limited exceptions, for all employees because such restrictions limit workers' mobility and lead to lower pay. The rule was set to take effect on September 4, 2024. Before the rule could become effective, two federal courts, one in Texas and one in Florida, issued injunctions blocking it. Under the Trump administration, the likelihood the FTC will try to enforce this ban is minimal (the FTC has appealed the rulings, but we expect those appeals to be withdrawn).

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The National Labor Relations Board's (NLRB) former-General Counsel, Jennifer Abruzzo, a Biden-appointee, was long critical of the use of non-competes. In 2023, Ms. Abruzzo issued a memo to all NLRB Regional Directors, Officers-in-Charge, and Resident Officers stating her position that non-compete provisions in employment contracts and severance agreements violate the National Labor Relations Act, except in limited circumstances. On October 7′ 2024, Ms. Abruzzo went even further and took the position that an employee should be entitled to "make whole relief" if the NLRB determines an employer utilized an unlawful non-compete. This would mean employees could pursue monetary damages against their former employer for alleged lost wages related to missed job opportunities they had not pursued because of the purported unlawful non-compete. President Trump terminated Ms. Abruzzo on January 27, 2025. Therefore, these directives will very likely be rescinded by the NLRB's new Trump-appointed General Counsel.

As a result, under the Trump administration, these federal agency attempts to invalidate non-compete agreements will fail, and non-competes will remain a valid way to protect an employer's reasonable business interests under federal law.

Restrictive Covenant Legislation at the State Level Continued to Increase in 2024

Currently, four states[1] ban the use of non-competes entirely and 33 states, plus Washington, D.C., have legislation restricting their use. States have continued to adopt salary-level thresholds for the use of non-competes. The map below shows those states that have banned non-competes, implemented salary-threshold requirements, and have other legislative restrictions.

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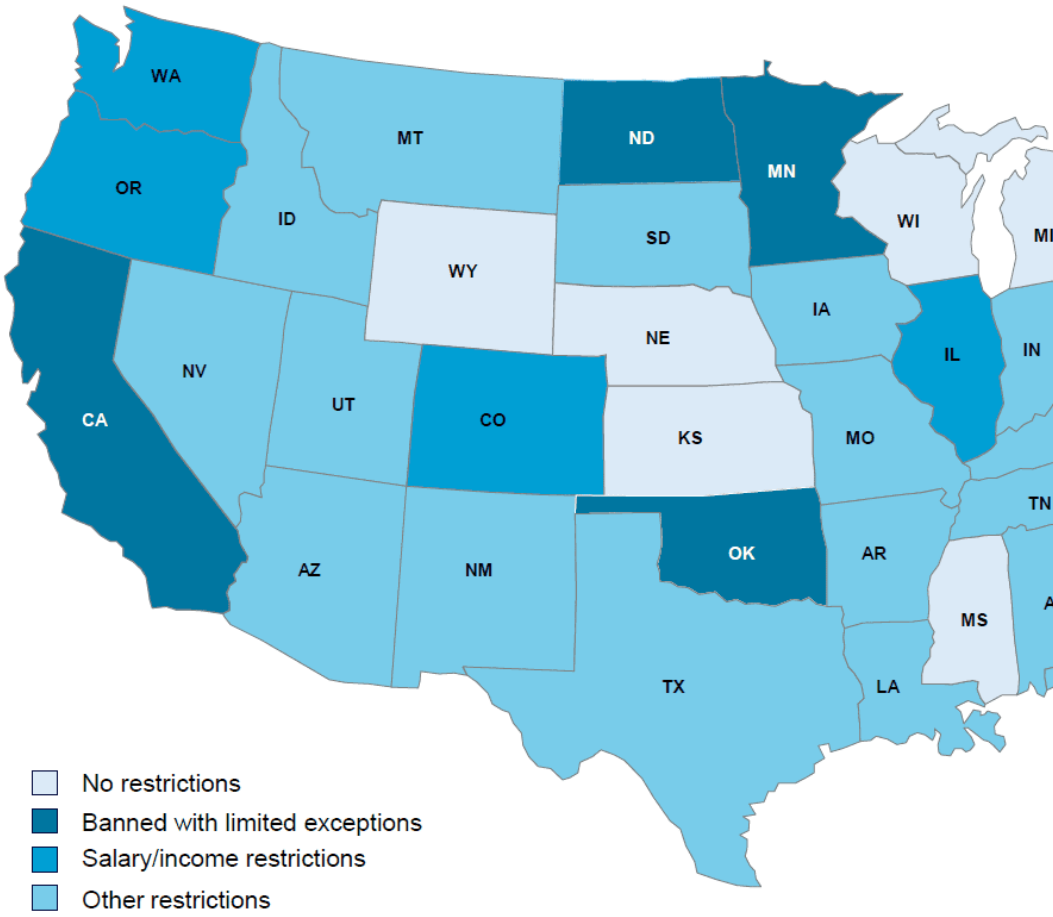
Current Noncompete Agreement Law



For example, Colorado limits non-compete agreements to employees making in excess of $123,750. Some other states' current salary requirements are as follows:

- Washington, D.C. – $154,200
- Illinois – $75,000
- Maryland – $46,800
- Maine – $60,240
- New Hampshire – $30,160
- Oregon – $113,241
- Rhode Island – $37,650

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- Virginia – $73,320
- Washington – $120,559

In 2025, three states, Louisiana, Maryland and Pennsylvania, will prohibit or limit the use of non-competes for various types of health care professionals. They join 17 other states, including Colorado, Indiana, Kentucky, Tennessee and Texas, which have some limits on non-competes for health care professionals. For example, Pennsylvania's new law limits non-competes for health care practitioners to one year in duration and voids non-competes for health care practitioners who are dismissed by their employers. Increased limits on non-competes at the state level are expected to continue in 2025.

Courts Increase Scrutiny of Non-Compete Agreements

Several states' highest courts recently invalidated non-compete clauses in employment or other business sales agreements. These cases are reminders that non-compete language should be reasonable in geographic scope and duration and supported by adequate consideration.

The Delaware Supreme Court, in *Sunder Energy, LLC v. Tyler Jackson et al.*, refused to enforce a non-compete agreement that was overly broad. In its December 10, 2024 opinion, the *Sunder* court held that a robust non-compete agreement presented to a minority, non-voting member of the business on New Year's Eve as part of the sale of that business was invalid. For example, he was asked to sign the non-compete that same day, the terms and language were so complex that it would have required legal counsel to assist in understanding them, the restrictions were essentially indefinite because they expired following the member's sale of certain restricted stock, the member was not involved in the business sale negotiations, and he received very minimal consideration for signing what was otherwise an overly broad non-compete. The *Sunder* court held the restrictions that applied to the member's "affiliates" would have prevented his "daughter from selling girl scout cookies" door to door. Notably, the *Sunder* court

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declined to "blue pencil" or revise the agreement to make the restrictions more reasonable and, instead, invalidated the non-compete restriction entirely.

The Pennsylvania Supreme Court also issued a stark reminder in recent years to employers there that non-competes must be signed at or before the start of employment for an offer of employment to serve as consideration for signing a non-compete. In *Rullex Co., LLC v. Tel-Stream, Inc.*, the court refused to enforce a non-compete agreement that was signed by a new employee approximately two months after the start of his employment, even though the employer gave and explained the non-compete agreement to the employee prior to the start of employment, informed him he could take time to review it with a lawyer, and the employee didn't request to make any changes to the non-compete before signing—albeit belatedly. The *Rullex* court held the agreement was not supported by the necessary consideration because the employee, who was now working at a direct competitor, had not signed the non-compete at the start of employment and was not given any additional consideration when he ultimately signed the agreement.

These two cases highlight an increasing trend of state courts scrutinizing and sometimes refusing to enforce seemingly valid non-compete agreements.

What Should Prudent Employers Do When Using and Enforcing Non-Competes?

Non-compete provisions are still valid ways to protect an employer's reasonable business interests in most states. Employers should consider taking the following steps when it comes to non-compete agreements:

- Review the terms for compliance with state laws where the employee is working, including salary threshold requirements.
- Realize non-competes are not a one-size-fits-all provision and narrowly tailor the non-compete to the employee's actual job duties, including the geographic areas where the employee truly works or has contact with customers.

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- Confirm the non-compete agreement is supported by sufficient – not nominal – consideration given at the time of signing.
- Give new employees non-competes for review before the start of employment and have the employee sign at the start of employment. For current employees, some courts have ruled that continued employment is sufficient consideration.
- Consider if non-solicitation provisions (provisions that allow the former employee to work in the same industry but restrict solicitation of former or current customers or employees) are sufficient safeguards for certain employees.
- Strengthen confidentiality provisions.
- Consider offboarding procedures that remind departing employees about their post-employment obligations, including providing a copy of the non-compete/non-solicitation agreement.
- Promptly issue cease and desist letters and pursue court action if necessary, when a former employee breaches their non-compete obligations.

For more information, please contact the authors or any member of Frost Brown Todd's Labor and Employment Practice Group.

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[1] California, Oklahoma, Minnesota, and North Dakota all generally ban non-competes in employment with limited exceptions such as restrictions tied to the sale of a business.

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