

Roundup: US employer resources on recent noncompete restrictions

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Section 1

Introduction

Noncompete agreements prevent former employees from working for a competing employer or starting a competing business for a certain time period after their employment ends. At the federal level, President Biden, the Federal Trade Commission (FTC), the National Labor Relations Board (NLRB) and Congress have recently attempted to ban or limit the use of noncompete agreements. At the state level, five states — California, Colorado, Minnesota, North Dakota and Oklahoma — have generally banned noncompete agreements, and New York is poised to do so if the governor signs approved legislation. Numerous other states have enacted restrictions, such as only allowing noncompete agreements for employees above a certain salary threshold. This roundup focuses on recent federal and state actions to restrict noncompete provisions and provides links to federal and state resources from organizations, government websites, third-party resources and news articles.

Section 2

Federal information

Executive Order and resulting FTC proposed rules

In July 2021, President Biden issued an [Executive Order on Promoting Competition in the American Economy](#) encouraging the FTC to propose rules that curtail the unfair use of noncompete clauses and other clauses or agreements that may unfairly limit worker mobility. In July 2022, the FTC and NLRB executed a Memorandum of Understanding to promote fair competition and workers' rights, including the issue of restrictive covenants.

In January 2023, the FTC issued a proposed rule that would ban noncompete agreements between employers and workers, void current noncompete agreements, and supersede relevant state laws. According to the FTC, noncompete clauses affect about one in five American workers, or approximately 30 million people.

Pushback on the proposal was swift, with employer organizations, such as the US Chamber of Commerce, questioning the authority of the FTC to “outright ban noncompete clauses in all employer contracts.” The FTC may revise its proposal before publishing the final rule, expected in April 2024, which would take effect 180 days after publication in the Federal Register. The final rule likely will be challenged in court.

- [Non-compete clause rule](#) (Federal Register, Jan. 19, 2023)
- [Non-compete clause rulemaking](#) (FTC, Jan. 5, 2023)
- [National Labor Relations Board and Federal Trade Commission Forge New Partnership to Protect Workers from Anticompetitive and Unfair Labor Practices](#) (NLRB, July 19, 2023)
- [Fact sheet: Executive Order on promoting competition in the American economy](#) (The White House, July 9, 2021)
- [Executive Order on promoting competition in the American economy](#) (The White House, July 9, 2021)
- [The FTC's initial policy case for banning all non-compete clauses in employment agreements](#) (Verdict, Oct. 24, 2023)
- [FTC orders 20-year non-compete ban for Anchor Glass](#) (Proskauer, June 30, 2023)
- [FTC's non-compete ban reportedly delayed until 2024: Your 7-step guide while waiting](#) (Fisher Phillips, May 25, 2023)
- [The latest on what media employers should know about the FTC's proposed ban on non-competes](#) (Jackson Walker, May 3, 2023)
- [The FTC must free American workers, consumers, and entrepreneurs from noncompete agreements](#) (Fortune, April 28, 2023)

- [Big businesses rally to preserve their right to limit ex-workers' job options](#) (NBC, April 20, 2023)
- [Attorney General Bonta joins multistate coalition supporting Federal Trade Commission's proposed rule limiting non-competes in employment](#) (California Department of Justice, April 19, 2023)
- [A practical guide for submitting comments to the FTC's proposed noncompete clause rule](#) (Morgan Lewis, Jan. 30, 2023)
- [Federal Trade Commission proposes ban on noncompete clauses](#) (Mercer, Jan. 13, 2023)
- [FTC proposes rule to ban non-compete clauses](#) (Gibson Dunn, Jan. 5, 2023)
- [Millions of workers are subject to noncompete agreements. They could soon be banned](#) (NPR, Jan. 5, 2023)
- [US moves to ban noncompete agreements in labor contracts](#) (The New York Times, Jan. 5, 2023)
- [The FTC's noncompete rulemaking is blatantly unlawful](#) (US Chamber of Commerce, Jan. 5, 2023)

Legislative activity

In February 2023, bipartisan legislation, the [Workforce Mobility Act of 2023](#), was introduced in the House and Senate to limit the use of noncompete agreements. The legislation would narrow the use of noncompete agreements to include only necessary instances of a dissolution of a partnership or the sale of a business; charge the FTC and the Department of Labor (DOL) with enforcement, as well as making explicit a private right of action in federal court; and require employers to make their employees aware of the limitation on noncompetes, as studies have found that noncompetes are often used even when they are illegal or unenforceable. The DOL would also have the authority to make the public aware of the limitation, and along with the FTC, would submit a report to Congress on any enforcement actions taken.

- [S 220 — Workforce Mobility Act of 2023](#) (Congress)
- [Murphy, Young reintroduce bill to protect American workers, limit non-compete agreements](#) (Office of Chris Murphy, Feb. 1, 2023)
- [Workforce Mobility Act of 2023: Another attempt to ban non-compete agreements nationwide](#) (Michael Best, Feb. 20, 2023)
- [Following FTC's lead, Senators renew efforts to ban non-compete agreements](#) (Husch Blackwell, Feb. 15, 2023)
- [Bipartisan bill to ban most non-compete agreements reintroduced in US Senate](#) (Jackson Lewis, Feb. 3, 2023)

NLRB's position

The proffer, maintenance and enforcement of noncompete provisions in employment contracts and severance agreements violates the National Labor Relations Act except in limited circumstances, the NLRB's General Counsel announced in [Memorandum GC 23-08](#) on May 30, 2023.

The memo explains that overbroad noncompete agreements are unlawful because they "tend to chill employees in the exercise of Section 7 rights when the provisions could reasonably be construed by employees to deny them the ability to quit or change jobs by cutting off their access to other employment opportunities that they are qualified for based on their experience, aptitudes, and preferences as to type and location of work."

However, the NLRB acknowledged that in some cases, noncompete agreements could be lawful if the provisions clearly restrict only an individual's managerial or ownership interests in a competing business, or true independent-contractor relationships. Also, there may be circumstances in which a narrowly tailored noncompete agreement's infringement on employee rights may be justified by special circumstances.

The memo noted the NLRB's commitment to an interagency approach to restrictions on the exercise of employee rights, including limits to workers' job mobility.

- [NLRB General Counsel issues memo on non-competes](#) (National Labor Relations Board, May 30 2023)
- [NLRB General Counsel challenges legality of non-compete agreements](#) (Dentons, June 23, 2023)
- [NLRB signals challenge to noncompete agreements for non-supervisory workers](#) (Greenberg Traurig, June 7, 2023)
- [NLRB General Counsel: Noncompete agreements violate federal labor law](#) (Morgan Lewis, June 6, 2023)
- [NLRB General Counsel says non-compete agreements usually violate US labor law](#) (Foley & Lardner, June 5, 2023)
- [Many non-compete agreements violate federal law according to NLRB's Chief Prosecutor: Your top 7 questions answered](#) (Fisher Phillips, June 1, 2023)
- [NLRB General Counsel says noncompete agreements violate federal labor law](#) (Ogletree Deakins, May 31, 2023)
- [Non-competes violate the National Labor Relations Act, Labor Board General Counsel Abruzzo argues](#) (Jackson Lewis, May 31, 2023)

Section 3

Multistate resources

- [Which states have banned noncompete clauses? Here's what to know as New York could be next](#) (Forbes, Dec. 6, 2023)
- [Alternatives to noncompetes: Employment law alternatives to noncompetes](#) (podcast) (Baker Hostetler, Dec. 5, 2023)
- [Noncompete update: Bans, new limitations and restrictions](#) (Offit Kurman, Nov. 3, 2023)
- [How does the latest crackdown on noncompete agreements affect US employers](#) (Cooley, Oct. 31, 2023)
- [Noncompete agreements in 2023: What employers need to know](#) (podcast) (Epstein Becker Green, Oct. 25, 2023)
- [The non-compete landscape in 2023: What employers should know about changes in non-compete law from the FTC, NLRB, antitrust claims and new state laws](#) (The National Law Review, Sept. 28, 2023)
- [The changing landscape of noncompete laws: State updates](#) (Bradley, Sept. 19, 2023)
- [Employee noncompetes: A state-by-state survey](#) (Beck Reed Riden, Sept. 18, 2023)
- [The trend towards limiting employment related non-competes, and alternate strategies for employers](#) (Lowenstein Sandler, July 20, 2023)
- [White & Case global non-compete resource center \(NCRC\)](#) (White & Case, July 13, 2023)
- [States outlaw noncompete agreements](#) (SHRM, July 10, 2023)
- [States with penalties for non-compete law violations](#) (Foley & Lardner, July 10, 2023)
- [State laws limiting non-compete agreements were a major trend in 2023](#) (Multistate.US, July 6, 2023)
- [States continue trend of banning employee non-competes](#) (Wilmer Hale, July 5, 2023)
- [Non-compete agreements: The trend towards obscurity?](#) (ABA, June 2, 2023)
- [2023 non compete agreements by state](#) (Homebase, April 27, 2023)
- [73 noncompete bills in 27 states, 1 passed, 1 about to, and 5 federal bills](#) (Fair Competition Law, April 17, 2023)
- [Non-competes will continue to be under attack in 2023](#) (Faegre Drinker, Feb. 14, 2023)

States' recent legislative activity

California

California's governor signed legislation (SB 699 and AB 1076) in September and October 2023 that reinforces its existing ban on noncompete agreements.

SB 699 prevents employers from entering into or enforcing contracts that are void under the California Business and Professions Code, regardless of whether the contracts were signed, or if employment was maintained outside of California. The legislation states that "California has a strong interest in protecting the freedom of movement of persons whom California-based employers wish to employ to provide services in California, regardless of the person's state of residence. This freedom of employment is paramount to competitive business interests." Employers that violate these provisions commit a civil violation, and an employee, former employee or prospective employee may bring a private action for injunctive relief and/or recovery of damages.

AB 1076 codifies existing case law by specifying that the statutory provision voiding noncompete contracts is to be broadly construed to void the application of any noncompete agreement or any noncompete clause in an employment context — no matter how narrowly tailored — that does not satisfy specified exceptions. These provisions apply also to contracts where the person being restrained is not a party to the contract. By Feb. 14, 2024, employers are required to provide written notification to current employees, and former employees who were employed after Jan. 1, 2022, that their noncompete clause or agreement is void. A violation of this law constitutes an act of unfair competition.

- [SB 699](#) (Legislature)
- [AB 1076](#) (Legislature)
- [Attorney General Bonta reminds employers and workers that noncompete agreements are not enforceable under California law](#) (State of California Department of Justice, March 15, 2022)
- [One-two punch: California's two new laws aiming to further ban post-employment noncompete agreements](#) (Michael Best, Nov. 28, 2023)
- [California expands its ban on noncompetes](#) (Vorys, Oct. 27, 2023)
- [Golden state crackdown on non-competes: California enacts second non-compete law to curtail use of non-competes with employees](#) (Seyfarth, Oct. 18, 2023)
- [4 things employers need to know about the new noncompete laws in California](#) (Fisher Phillips, Oct. 15, 2023)
- [California further extends the ban on employers entering noncompete agreements starting in 2024](#) (Greenberg Traurig, Sept. 26, 2023)
- [California reaches across state lines to invalidate employee non-compete agreements](#) (Littler, Sept. 6, 2023)
- [Why California executives can't afford to ignore non-compete agreements](#) (Ottinger, Feb. 23, 2023)

Colorado

New restrictions on the use of noncompete agreements by employers became effective on Aug. 10, 2022 — 90 days after the governor signed HB 22-1317. The law also generally bars out-of-state choice of law or forum provisions, contains an exception for highly compensated employees in certain circumstances, requires a separate notice document for any employee subject to noncompete restrictions, and creates penalties of \$5,000 per employee for violations and remedies (such as injunctive relief and private right of action to recover damages, reasonable costs and attorney fees).

- [HB 22-1317](#) (Legislature)
- [Colorado's non-compete statute Q&A](#) (Colorado Lawyer, March 2023)
- [Non-compete agreements in Colorado: A new era](#) (Colorado Lawyer, November 2022)
- [Colorado's new non-compete law: 8 key takeaways](#) (Fortis Law Partners, Oct. 4, 2022)
- [Colorado noncompete agreements get significant updates](#) (GovDocs, June 30, 2022)
- [Colorado's new non-compete law signed by governor, will go into effect on August 10, 2022](#) (Jackson Lewis, June 28, 2022)
- [Coming August 2022: Colorado substantially limits noncompete agreements](#) (Faegre Drinker, June 13, 2022)
- [Colorado criminalizes the use of illegal non-competes](#) (Ballard Spahr, Jan. 31, 2022)

Connecticut

- [New restrictions on physician non-compete agreements in Connecticut](#) (Littler, June 30, 2023)

Illinois

- [SB 672](#) (Legislature)
- [Major changes to Illinois' non-compete and non-solicit laws: Company agreements likely require revision](#) (Perkins Coie, March 1, 2022)
- [Illinois employers: New noncompete law effective Jan. 1, 2022](#) (Armstrong Teasdale, Dec. 22, 2021)
- [Illinois updates noncompete law](#) (GovDocs, Oct. 21, 2021)
- [Illinois enacts law limiting non-compete and non-solicitation provisions with employees](#) (Foley & Lardner, Aug. 31, 2021)
- [Governor Pritzker signs Illinois noncompete legislation into law](#) (Ogletree Deakins, Aug. 24, 2021)

Minnesota

From July 1, 2023, covenants not to compete entered into on or after July 1, 2023 are generally void and unenforceable. A covenant not to compete is an agreement between an

employer and employee "that restricts the employee, after termination of the employment, from performing work for another employer for a specified period of time, work in a specified geographic area, or work for another employer in a capacity similar to the employee's work for the employer that is party to the agreement." It does not include a nondisclosure agreement, an agreement designed to protect trade secrets or confidential information, a nonsolicitation agreement, or an agreement restricting the ability to use client or contact lists, or solicit customers of the employer.

Covenants not to compete are valid and enforceable if agreed upon during the sale of a business or in anticipation of the dissolution of a business, if the restrictions are within a reasonable geographic area and for a reasonable length of time. Employers are prohibited from trying to circumvent the restrictions on noncompete agreements by using another state's law or forum.

- [SF 3035 \(Legislature\)](#)
- [Minnesota's non-compete ban becomes effective July 1, 2023 \(Weil, June 28, 2023\)](#)
- [Sorting out the noncompete ban \(Minnesota Lawyer, June 7, 2023\)](#)
- [Minnesota non-compete ban signed into law \(Lathrop GPM, June 6, 2023\)](#)
- [New Minnesota law bans most post-employment non-competes: 6 key takeaways \(Latham Watkins, June 5, 2023\)](#)
- [Governor Walz signs into law non-compete ban in Minnesota \(Husch Blackwell, June 5, 2023\)](#)
- [Minnesota governor signs labor funding noncompete ban bill into law \(Ogletree Deakins, May 27, 2023\)](#)
- [Minnesota expected to become fourth state to ban non-compete agreements \(DLA Piper, May 24, 2023\)](#)

Nevada

- [Assembly Bill 47 \(Legislature\)](#)
- [Recent Nevada law places new restrictions on non-compete agreements \(Sutton Hague, Dec. 20, 2021\)](#)
- [Nevada amends law regulating noncompetition covenants \(Epstein Becker Green, June 14, 2021\)](#)
- [Nevada amends non-compete statute to further protect employees \(Amundsen Davis, June 1, 2021\)](#)

New Jersey (proposal)

[Assembly Bill 3715](#), introduced in early May 2022, would restrict employers' ability to enter into and enforce noncompete agreements. Under the Fair Labor Standards Act, employers would be prohibited from entering into noncompete agreements with certain categories of employees, such as nonexempt employees. Unless terminated for misconduct, employees subject to a noncompete agreement would have to be paid their full pay, including fringe

benefits (such as vacation and sick leaves, medical, life and pension plans, or any other benefit of economic value) for the full period of the agreement — even if the employee starts working for another employer. Noncompete periods would be capped at 12 months following the termination date, and could not prevent an individual from seeking work in another state. Employers would have to notify employees of their intent to enforce the noncompete agreement, in writing (unless dismissed for misconduct), within 10 days of their termination, and the terms of the noncompete agreement would have to be disclosed to prospective employees by the earlier of the formal offer of employment or 30 business days before the start of the employee's employment.

- [Assembly Bill 3715](#) (Legislature)
- [Proposed laws to limit non-compete clauses: New Jersey Assembly Bill A3715 and the FTC notice of proposed rulemaking](#) (Brach Eichler, April 24, 2023)
- [FTC proposes rule to ban noncompete agreements in New Jersey and nationwide](#) (Resnick law group, March 10, 2023)
- [Non-compete agreements and changes in New Jersey's business climate](#) (Porzio, Feb. 27, 2023)

New York (proposal)

- [S3100A](#) (Legislature)
- [New York could be the latest state to ban noncompete agreements](#) (Senate, Dec. 6, 2023)
- [New York's noncompete bill — Gov. Hochul weighs in](#) (The National Law Review, Dec. 1, 2023)
- [Federal Trade Commission highlights positive impact of banning noncompete agreements: FTC letter to Governor Hochul outlines several reasons for Governor to sign noncompete ban into law](#) (Senate, Nov. 29, 2023)
- [Senator Sean Ryan, allies urge Governor Hochul to sign noncompete ban](#) (Senate, Nov. 28, 2023)
- [Should your ex-boss get a say in your new job? Wall Street says yes.](#) (The New York Times, Nov. 12, 2023)
- [New York State's pending non-compete ban: Potential impact on corporate transactions](#) (Brownstein, July 7, 2023)
- [New York poised to enact broad ban on non-compete agreements](#) (Levenfeld Pearlstein, July 5, 2023)
- [Yet unsigned New York bill provides potentially sweeping ban on non-compete agreements](#) (Loeb & Loeb, June 2023)
- [Wide-ranging New York noncompete law awaits governor's signature](#) (Troutman Pepper, June 30, 2023)
- [The non-compete ban is coming to New York](#) (Kane Kessler, June 22, 2023)

- [New York legislature passes noncompete ban and awaits governor's signature](#) (MWE, June 22, 2023)
- [Breaking: New York on the brink of banning non-compete agreements](#) (Reed Smith, June 21, 2023)
- [New York ban on worker non-compete clauses awaiting governor's approval](#) (Paul Weiss, June 21, 2023)
- [New York state legislature passes prohibition on employer noncompete agreements](#) (Morgan Lewis, June 21, 2023)

Oregon

- [Senate Bill 169](#) (Legislature)
- [Oregon noncompete law is changing \(again\): What employers need to know](#) (Fisher Phillips, June 8, 2021)
- [Oregon enacts new modifications to noncompete law for 2021](#) (Ogletree Deakins, June 1, 2021)

Virginia

- [SB 480](#) (Legislature)
- [New posting update: Virginia bans noncompete contracts for low-wage employees](#) (GovDocs, Aug. 4, 2020)
- [Virginia bans non-competes for low-wage employees](#) (BFV, April 23, 2020)

Washington, DC

The Non-compete Clarification Amendment Act of 2022 ([Bill 24-256](#)) relaxes the restrictions on the use of noncompete provisions and agreements. The Act clarifies the workplace policies or employment provisions that do not violate the use of noncompete provisions and agreements. Employers can bar an employee's use, in addition to the disclosure, of confidential and proprietary information during, or after, the employee's employment. Limited exceptions allow the use of noncompete provisions with highly compensated employees, including medical specialists. The Act specifies what must be contained in a noncompete agreement for it to be valid and enforceable; clarifies remedies for violations of the Act and how the Act relates to collective bargaining agreements; and clarifies how the law applies relative to other District of Columbia laws and rulemaking requirements.

- [Bill 24-256](#) (DC Council)
- [Washington, D.C., finalizes amendments to law on noncompete agreements](#) (SHRM, Aug. 17, 2022)
- [5 recommendations for D.C. employers as ban on non-compete agreements appears to be postponed until October 1](#) (Fisher Phillips, March 11, 2022)
- [Washington, DC rolls back proposed ban on non-compete agreements](#) (Davis Gilbert, Sept. 14, 2022)

- [Washington, DC ban on non-competes delayed to April 2022](#) (BCLP, Sept. 14, 2021)

Wisconsin (proposal)

- [AB 481](#) (Legislature)
- [Wisconsin legislature proposes joining other states in ban on non-compete agreements](#) (Seyfarth, Nov. 1, 2023)
- [Wisconsin legislators propose near-total ban on noncompete agreements](#) (JD Supra, Oct. 19, 2023)



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