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Employee Benefit Plan Review

A Year of Contrasts and Crackdowns in Noncompete Agreements

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2025 was another busy year in noncompete law. While the federal government dialed back efforts to limit the use of noncompetition agreements, state legislatures and courts remained quite active in the area. Many state legislatures and courts continued to narrow the circumstances in which post-employment noncompetition restrictions can be used, while others went a different direction. Accordingly, employers looking to protect confidential information and customer goodwill using noncompetition provisions must stay informed of state law developments.

This article discusses the top ten noncompete developments of 2025.

1. The Trump Administration Dials Back Federal Efforts to Limit Noncompetes

In September 2025, the FTC moved to voluntarily dismiss its appeals (filed during the Biden administration) of two district court decisions holding that the agency exceeded its statutory authority in promulgating an April 2024 rule that imposed a nationwide ban of employment noncompete agreements for most workers (the Rule). At the same time, the FTC issued a press release indicating that it would not issue a new version of the Rule or challenge the U.S. District Court of the Northern District of Texas' nationwide injunction prohibiting the FTC from implementing or enforcing the Rule.

However, the FTC continued enforcement actions challenging overbroad noncompete agreements and has encouraged all employers — especially health care employers — to review their employment agreements closely to ensure that they are narrowly construed. For example, in November 2025, the FTC entered into a consent agreement with Gateway US Holdings, Inc. (Gateway) in which Gateway must, among other terms, immediately stop enforcing all of its noncompete agreements. The FTC had challenged Gateway's practice of requiring nearly all newly hired employees to execute noncompete agreements, regardless of the employees' position or responsibilities. And in September 2025, the FTC announced the issuance of noncompete warning letters to many health care employers and staffing companies asking them to review and change "unreasonable noncompete agreements in employment contracts for vital roles like nurses, physicians, and other medical professionals."

Similarly, the National Labor Relations Board (NLRB) reversed previous guidance restricting noncompetes. In February, Acting General Counsel William Cowen rescinded memoranda issued under the Biden

administration, including a 2023 memo declaring that the "proffer, maintenance and enforcement" of noncompete agreements in employment contracts and severance agreements violates the National Labor Relations Act.

2. Wyoming Bans Most Noncompete Agreements; New Jersey May Follow

Wyoming enacted a new law (effective July 1, 2025) which voids all noncompete agreements with employees or independent contractors unless the agreement:

(1) is entered into as part of a sale of business;
(2) concerns executive or management employees, or professional staff who support such employees; or
(3) provides for the protection of trade secrets. In addition, the new law prohibits all noncompete agreements "between physicians."

The new law does not address the enforceability of nonsolicitation agreements.

Subsequently, on December 4, 2025, a New Jersey bill that would ban most worker noncompete agreements cleared the Assembly Labor Committee in a bipartisan vote. The bill was not voted out of committee before the legislative session ended in January, but is likely to be reintroduced in the next session.

3. Kansas And Florida Buck the Trend And Enact Pro-Employer, Pro-Restrictive Covenant Statutes

In contrast to recent efforts by many states to prohibit or severely restrict the use of noncompete agreements, both Kansas and Florida enacted statutes in 2025 designed to increase the enforceability of post-employment restrictive covenants.

The Kansas Restraint of Trade Act (the Act) previously provided that noncompetes may not be deemed a restraint of trade. For agreements entered on or after July 1, 2025, Kansas law further clarifies that nonsolicitation agreements also do not violate the Act. In addition, new Kansas law provides that:

- Customer nonsolicits are conclusively presumed enforceable as long as they:
  (1) are limited to restricting an employee's ability to provide or offer a competitive product or service;
  (2) are limited to "material contact customers"; and
  (3) do not exceed two years.
  A "Material Contact Customer" is defined as any customer who the employee either directly or indirectly solicited, produced or serviced, or regarding which the employee received confidential business or proprietary information during employment.
- Employee nonsolicits are conclusively presumed enforceable as long as they: (1) are designed to protect confidential information, customer/supplier relationships, goodwill or loyalty; or (2) do not exceed two years.

Finally, the new law directs courts to modify any overbroad restrictive covenant under their consideration.

In Florida, effective on July 1, 2025, the Choice Act creates a statutory presumption of enforceability for noncompete agreements entered into with employees or independent contractors earning (or reasonably expected to earn) more than two times the annual mean wage in the Florida county where the employer has principal place of business or, if the employer's principal place of business is not in Florida in the county in which the covered employee resides. The law provides that covered noncompetes are fully enforceable if each of the following conditions are met:

(1) The employee is given seven days to consider whether to sign and is notified of right to seek counsel (may require after employment started).
(2) The employee has acknowledged (in writing) that they will receive confidential information or customer relationship access/information in course of employment.
(3) The temporal scope of the noncompete is no more than four years (and reduced by any garden leave, if applicable).
(4) The noncompete only limits the employee from taking on new employment in which the employee would provide services in a role: (a) similar to service provided to employer during the three years preceding noncompete; or (b) in which it is likely that employee would use confidential information or customer relationships of employer.

In addition, the new Florida law provides that garden leave arrangements shall be fully enforceable for up to four years if the following conditions are met:

(1) The employee is given seven days to consider whether to sign and is notified of right to seek counsel (may require after employment started).
(2) The employee has acknowledged (in writing) that they will receive confidential information or customer relationship access/information in course of employment.
(3) The employee's base salary and benefits are paid during the garden leave.

(4) The employee is not required to provide services to employer after 90 days and is advised that they may work for another business with the employer's consent.
(5) The employer may only reduce the garden leave period with 30 days' notice.

The Florida law requires courts to issue a preliminary injunction to enforce noncompete agreements absent clear and convincing evidence that they are not enforceable. Finally, the law applies to employees and independent contractors whose primary workplace is in Florida and to employers with a principal place of business in Florida, regardless of choice-of-law provisions.

4. Several More States Enact Restrictions on Noncompetes for Health Care Practitioners

Arkansas, Colorado, Indiana, Louisiana, Montana, New Hampshire, Oregon, Utah, and Texas all enacted or expanded statutes in 2025 that limit the use of noncompete agreements for health care practitioners. Most of these states (Arkansas, Colorado, Indiana, Montana, Oregon, and Utah) joined Wyoming in voiding noncompetes altogether for physicians, with certain limited exceptions (e.g., sale of business or shareholder restrictions). For example:

- Louisiana's new law limits the temporal scope of physician noncompetes to three years from the date of the initial contract for primary care physicians, and five years for specialty care physicians.
- New Hampshire extended protections voiding any prohibiting a physician's ability to practice medicine in any geographic area to also cover advanced practice registered nurses.
- Texas revised an existing statutory buy-out for noncompete agreements with a health care practitioner to no greater than the physicians' total annual salary/wages at time of separation.

5. Virginia Expands its Statutory Limitation on Noncompete Agreements

Virginia amended its noncompete statute, broadening the ban to cover all employees entitled to overtime under the Fair Labor Standards Act (nonexempt employees), effective for agreements entered on or after July 1, 2025. Previously, the ban applied only to those earning less than the state average weekly wage.

6. Colorado Limits Enforceability of Noncompetes In Sale-of-Business Transactions

Applying to agreements entered or renewed on or after August 6, 2025, a noncompete entered as part of a sale-of-business transaction will only be enforceable under Colorado law to a covered minority-interest seller (i.e., those holding less than 50% ownership interest in the seller and who received such ownership interest as equity compensation or otherwise as consideration for services rendered) if the length of the noncompete does not exceed "a number calculated by the total consideration received by the individual from the sale divided by the average annualized cash compensation received by the individual from the business, including income received on account of their ownership interest during the preceding two years or during the period of time that the individual was affiliated with the business, whichever period of time is shorter."

7. Federal Circuits Find That Forfeiture-For-Competition Clauses Are Not Subject to Reasonableness Review

In January 2025, the U.S. Court of Appeals for the Seventh Circuit issued a decision holding that forfeiture-for-competition clause was not subject to a reasonableness review under Delaware law, but rather would be enforced in the same manner as any contractual undertaking between parties.[1]

Several months later, the U.S. Court of Appeals for the Tenth Circuit issued a similar decision.[2] The Tenth Circuit (applying Kansas law) affirmed that an employer was legally entitled to claw back $31 million in unvested stock awards due to a former employee's violation of post-employment restrictive covenants, and further found that the enforceability of the forfeiture-for-competition provision was not subject to a reasonableness review.

8. Washington Supreme Court Narrows Exception for Anti-Moonlighting Provisions for Low-Wage Workers

A Washington state law enacted in 2020 prohibited employers from restricting low-wage workers from moonlighting, unless the restriction is designed to:

(1) promote safety;
(2) avoid interference with reasonable scheduling expectations; or
(3) ensure compliance with an employee's legal obligations, including the employee's duty of loyalty.

Now, the Washington Supreme Court has ruled that the duty-of-loyalty exception to the statute's prohibition on anti-moonlighting provisions for low-wage workers must be construed narrowly, and that an anti-moonlighting provision "barring employees from providing

any kind of assistance to competitors exceeds" that narrow construction.[3]

9. Massachusetts Courts Further Define Scope of Massachusetts Noncompetition Agreement Act (MNAA)

Two recent Massachusetts court decisions provide greater clarity regarding the scope of the MNAA's protections.

In June 2025, the Massachusetts Supreme Court ruled that the MNAA does not apply to forfeiture for solicitation agreements.[4]

In September 2025, a Massachusetts Superior Court considered the meaning of "employer" with respect to the MNAA's requirement that a noncompete agreement entered after commencement of employment must be "signed by both the employer and employee."[5] In that case, the individual defendant had entered into equity agreements with the parent company of his employer, all of which contained noncompetition provisions. When the employer sought to enjoin the defendant's employment with a competitor following his separation of employment, the court refused to enforce the noncompete provisions because the defendant's former employer was not a party to the agreement. The court concluded that a parent or grandparent company of an employer entity may not be construed to be the employer for purposes of the MNAA.

10. Delaware Courts Continue to Resist Enforcement of Overbroad Noncompete Agreements

In 2025, Delaware courts continued their trend of refusing to enforce or reform overbroad noncompete agreements.

The Delaware Court of Chancery[6] refused to enforce a broad noncompete provision in an incentive equity agreement prohibiting an employee, for 18 months following separation, from engaging in any activities competitive with any business conducted or proposed to be conducted by his employer or the employer's parent or subsidiaries anywhere. Among other things, the court found that the restriction was overbroad and unreasonably vague in its scope given that it failed to describe the employer's parents and affiliates, and because the employee had no confidential knowledge regarding the parent. The court further found that the temporal scope of the noncompete was unreasonable given its broad scope and the minimal consideration provided in exchange for the restriction. The court further refused to blue-pencil the agreement.

The Delaware Court of Chancery[7] also refused to enforce a noncompetition provision contained in an equity incentive agreement for lack of consideration. In particular, the court found that, because the only consideration supporting the noncompete were equity units which were immediately forfeited upon the individual defendant's termination of employment, any consideration supporting the noncompetition provision had been extinguished. The case is on appeal with the Delaware Supreme Court, where oral argument was heard in early November 2025. On appeal, the employer argued that the court erred in failing to assess adequacy of consideration at the time of contract formation.

Then, the Delaware Court of Chancery[8] refused to enforce or reform restrictive covenants that protected not just the employer, but any "Group Company" that included its direct or indirect parents or subsidiaries. The court also held an employee nonsolicitation provision was overbroad because it prohibited "encouraging" any employee to leave, even for reasons that did not relate to competition. And in refusing to reform the covenants, the court noted that "Delaware courts generally refuse to blue-pencil facially overbroad restrictive covenants, particularly where the defect is structural rather than clerical."

In Summary

- Federal noncompete efforts slowed in 2025, but states moved in different directions — some tightening restrictions, others making enforcement easier for employers.
- States increased protections for health care workers and low-wage employees, with several new laws and court decisions limiting noncompete use.
- Courts, especially in Delaware and Massachusetts, refused to enforce overbroad or unsupported noncompetes, signaling greater judicial scrutiny.

Notes

1. LKQ Corp. v. Rutledge, No. 23-2330 (7th Cir. Jan. 22, 2025).
2. Lawson v. Spirit Aerosystems, No. 23-3136 (10th Cir. April 18, 2025).
3. David v. Freedom Vans LLC (Wash. Jan. 23, 2025).
4. Miele v. Foundation Medicine, Inc. (Mass. June 13, 2025).
5. Annaplan v. Brennan, No. 2584CV02350 (Mass. Super. Ct. Sept. 11, 2025).
6. Payscale, Inc. v. Norman, No. 2025-0118-BWD (Del. Ch. Apr. 4, 2025).
7. North American Fire Ultimate Holdings LP v. Doorly, C.A. No., 2024-0023-KSJM (Del. Ch. Mar. 7, 2025).
8. HKA Global v. Beirise, 2024-0910-LWW (Del. Ch. Dec. 16, 2025).

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