Introduction to the 2025-2026 Edition

EMPLOYEE NONCOMPETITION LAW

What's New in this 2025-2026 Edition

Employee Noncompetition Law covers the statutory and common-law rules, key issues, and practical considerations relating to employee restrictive agreements. This book includes, among other things, an analysis of nearly all the aspects of covenants not to compete, including the underlying principles of noncompetition agreements; how to draft agreements; types of covenants not to compete; enforcement of covenants; the effects of certain federal statutes on noncompetition agreements; goodwill; and trade secrets. This publication contains a wealth of case law from a variety of state and federal courts, which establish systematic, precedent-setting guidelines for dealing with noncompetition agreements. Also included:

- Table of cases and index which eases research on specific sub-topics
- Sample non-compete clauses
- Advice on drafting sound agreements

Updates of Significance in this 2025-2026 Edition

As discussed in the prior edition on May 7, 2024, the United Stated Federal Trade Commission ("FTC") published its final rule, the "Non-Compete Clause Rule," providing that it is an unfair method of competition—and therefore a violation of section 5 of the Federal Trade Commission Act ("FTC Act")—for persons to, among other things, enter into non-

compete clauses ("non-competes") with "workers" on or after its effective date September 4, 2024 (the "Non-Compete Clause Rule Effective Date"). See The Non-Compete Clause Rule, 89 Fed. Reg. 38342 (to be codified at 16 C.F.R. pts. 910 and 912). However, just before the Non-Compete Clause Rule took effect, a federal district court issued an order stopping the FTC from enforcing the Non-Compete Clause Rule nationwide. See Ryan LLC v. Federal Trade Commission, Civ. Action No. 3:24-CV-00986 (N.D. Tex. Aug. 20, 2024) (setting aside the Non-Compete Rule on grounds that the FTC lacks statutory authority to promulgate it and that the Rule is arbitrary and capricious). This order has been appealed to the United States Court of Appeals for the Fifth Circuit, which was pending as of May 2025. A ruling is not expected until later in 2025. Of course, it is possible that the new executive administration may abandon the appeal. Accordingly, while the Non-Compete Clause Rule is discussed in Section § 7:3 of this edition, it is not presently enforceable and considered unlikely to ever take effect. Recent case law updates have also been added throughout the publication.

State legislative updates of note since the last edition:

- Louisiana, Maryland and Pennsylvania have limited or prohibited the use of noncompetes for certain types of health care professionals. See La.-R.S. 23:921(M) (effective Jan. 1, 2025, noncompetes restricting primary care physicians from practicing medicine will expire three years from the effective date of the initial non-compete agreement); MD Code, Labor and Employment, § 3-716 (effective Jun. 1, 2024, noncompetes with licensed veterinarians and healthcare professionals who work in direct patient care and make less than $350,000 annually are void, and for healthcare professionals providing direct patient care and earning more than $350,000, noncompetes are limited in scope to one year from termination of the relationship and ten miles from the primary place of employment); Pennsylvania Act of July 17, 2024, P.L. 846, No. 74 (effective January 1, 2025, noncompetes between a healthcare practitioner and an employer are limited to one year in duration, except in cases related to the sale of a business).
- Washington State expanded and clarified its noncompete statute. See RCWA 49.62 (effective Jun. 6, 2024,

requiring employers to disclose the terms of the noncompete by the time of the initial oral or written acceptance of an offer).

Judicial updates of note since the last edition:

- The Delaware Supreme Court, in Sunder Energy, LLC v. Jackson, 2024 WL 5052887 (Del. 2024), held that a trial court's (here the Court of Chancery) decision not to grant an injunction would be reviewed under an abuse-of-discretion standard where the appellant failed to identify any questions of law. The Court of Chancery had declined to blue pencil the noncompete agreement after finding it overbroad and unenforceable. The parties on appeal before the Supreme Court apparently "approached this appeal to some extent as though it is a referendum on the future of blue penciling in Delaware," which caused the Court to expressly refuse to adopt any bright line rule about blue penciling restrictive covenants, stating that balancing the State of Delaware's high regard for the parties' freedom of contract requires a "nuanced approach that does not lend itself well to judicial standard making" and that while some states have addressed the issue by statute, the State of Delaware had not. The Court affirmed the Court of Chancery's refusal to blue pencil a noncompete that under the circumstances had shown that the covenantor did not negotiate the noncompete in any substantive way and had little to no bargaining power.
- Months later, the Delaware Court of Chancery had an opportunity to apply the Delaware Supreme Court's holding in Sunder Energy, LLC v. Jackson discussed above. In Weil Holdings II, LLC v. Alexander, 2025 WL 689191 (Del. Ch. Mar. 4, 2025), the Court of Chancery stated that the Delaware Supreme Court confirmed that Delaware courts have the discretion to blue-pencil overbroad noncompete agreements. However, in this case, the Court refused to blue-pencil a non-compete in an LLC agreement being enforced against the unitholder employee because blue-penciling would require the court to craft an entirely new covenant to which neither side agreed, and would require the court to select an arbitrary duration to solve the indefinite duration of the noncompete.
- The Delaware Court of Chancery, in an unpublished opinion, reminds practitioners that "While Delaware

is a contractarian state, Delaware courts do not mechanically enforce non-competes." Hub Grp., Inc. v. Knoll, No. 2024 WL 3453863 (Del. Ch. 2024) (denying a motion to enforce a non-compete by preliminary injunction), appeal refused, 024 WL 4343006 (Del. 2024). The plaintiff, attempting to enforce the non-compete in this case, argued that the Court of Chancery should not scrutinize its non-compete in light of the Delaware Supreme Court's holding in Cantor Fitzgerald, L.P. v. Ainslie, 312 A.3d 674 (2024). The Court of Chancery disagreed with the plaintiff, clarifying that the Ainslie Court had "reasoned that, unlike ordinary contract provisions, forfeiture-for-competition provisions should be subject—much like restrictive employment covenants are—to scrutiny for reasonableness." The Court of Chancery then found this non-compete overbroad, describing the non-compete as a "pile of words," in finding it improbably that plaintiff would be able to enforce it after a trial on the merits.

- The Washington Supreme Court, in David v. Freedom Vans LLC, 562 P.3d 351 (Wash. 2025), addressed the relationship between the common law duty of loyalty and the enforceability of noncompete agreements. In Washington, state law provides that employers who pay their employees less than twice the minimum wage cannot prohibit them from working second jobs, subject to limited exceptions. See RCW 49.62.070. One such exception states that the law "does not alter the obligations of an employee to an employer under existing law, including the common law duty of loyalty and laws preventing conflicts of interest." In this case of first impression, an employer required employees that never made more than twice the minimum wage to sign a noncompete agreement restricting them from "directly or indirectly" engaging in any business that competed with the employer. The trial court and appeals court found the noncompete enforceable, holding that the state law did not restrict the employer's right to require employee loyalty consistent with common law. The employees argued to the Supreme Court that their other jobs did not violate a duty of loyalty which was limited to prohibiting "direct" competition and therefore the noncompete was unenforceable. The employer argued that the duty of loyalty extends to "all kinds of assistance." The Washington Supreme Court reversed, holding that the legislature requires

the common law duty of loyalty to be construed narrowly in regard to low wage employees and the agreement must be reasonable, remanding to determine if the noncompete was indeed reasonable. The Supreme Court rejected the concept that the duty of loyalty extends so broadly to "all kinds of assistance" with a competitor as contrary to the legislature's intent to protect low wage workers by allowing them to earn a supplemental income to support themselves and their families.

- The Court of Appeals of Indiana, in MED-1 Solutions, LLC v. Taylor, 247 N.E.3d 1269, 1278 (Ind. Ct. App. 2024), clarified that the promise of continued employment can serve as adequate consideration for a noncompete, even if the employee did not receive a right to employment for any particular duration and such noncompete was the second noncompete signed by the employee.