

Introduction to the 2026-2027 Edition

EMPLOYEE NONCOMPETITION LAW

What's New in this 2026-2027 Edition

Employee Noncompetition Law covers the statutory and common-law rules, major issues, and practical considerations of employee restrictive agreements. You will find analysis of 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 non-competition agreements; goodwill; and trade secrets. This volume contains a wealth of case citations from a variety of state and federal courts, which establish systematic, precedent-setting guidelines for dealing with noncompetition agreements. You will also find:

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

Employee Noncompetition Law is updated annually.

Updates of Significance in this 2026-2027 Edition

On May 7, 2024, the United States 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, as discussed in last year’s update, just before the Non-Compete Clause Rule was to be effective, a 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 was appealed to the United States Court of Appeals for the Fifth Circuit, but the FTC voted to dismiss the appeal and accede to the vacatur of the Non-Compete Clause Rule. Accordingly, while the Non-Compete Clause Rule is discussed in detail in Section § 7:3 of this edition, it is now vacated and unenforceable. In April 2025, the FTC commenced a public inquiry into the impact of federal regulations on anti-competitive regulations. Although the FTC plans to use the results of the public inquiry to reduce anticompetitive regulations, the ultimate outcome remains to be seen. As of 2026, the enforceability of non-compete clauses largely remains governed by state law.

State legislative updates to be aware of since May 2025:

- Washington State signed Engrossed Substitute House Bill 1155 into law in March 2026, which will take effect on June 30, 2027, to effectively cause all non-compete agreements to become void and unenforceable.
- Colorado has removed the highly-compensated worker exception for non-compete agreements for healthcare workers and prohibited non-compete agreements that restrict the healthcare provider’s continuing practice of medicine, new professional contact information, or a patient’s right to choose a healthcare provider. See S.B. 25-083, 75th Gen. Assemb. Reg. Sess. (Co. 2025).

Judicial updates to be aware of since May 2025:

- The U.S. Court of Appeals for the Eighth Circuit, in *Wilbur-Ellis Company, LLC v. Jens*, 139 F.4th 608,

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612 (8th Cir. 2025), held that a noncompete clause generally becomes inoperable when an employment agreement is terminated unless there is additional language in the agreement that suggests that the parties intended for the noncompete clause to survive past the term of employment.

- The Court of Appeals in Arkansas, in *Nonmacher v. Tri-State Iron & Metal Co.*, 718 S.W.3d 1 (Ark. App. 2025), made clear that an employee’s refusal to sign an employment contract with a noncompete provision may not preclude the employee from being bound by a unilaterally modified employment contract containing a noncompete provision. The court held that although in general, a contract cannot be unilaterally modified, an employment contract can be replaced or modified by a unilateral contract if an at-will employee retains employment with the knowledge of the modified terms. An employee signifies acceptance of and supplies consideration for the unilateral contract by continuing to perform on the job.
- The Appellate Division of the Supreme Court of New York, in *Levin v. Salvini*, 251 N.Y.S.3d 654, 655 (N.Y. App. Div. 1st Dept. 2026), concluded that liquidated damages for breach of a noncompete clause must be reasonably proportioned to what is necessary to compensate a party for the breach itself and not merely a “penalty” for the breach. The court held that a \$1 million liquidated damages amount for breach of a noncompete clause in a partnership agreement was unenforceable, as the disproportionately large amount “was not calculated with any precision and was intended to sufficiently disincentivize disloyalty.”
- The Court of Chancery of Delaware, in *Fortiline, Inc. v. McCall*, 341 A.3d 1027 (Del. Ch. 2025), clarified that the enforceability of a noncompete clause does not turn on whether the plaintiff seeks an award of damages in lieu of injunctive relief, as enforcement of noncompete clause implicate a public policy interest which necessitates a reasonableness review regardless of the remedy sought.
- The District Court of Appeal of Florida, in *Bariana v. Fla. Health Scis. Ctr., Inc.*, 419 So. 3d 1118 (Fla. Dist. Ct. App. 2025), concluded that as a matter of public policy, a noncompete clause in a surgeon’s employment agreement was unenforceable, as enforcement of the clause would jeopardize the public health of the

community, a concern which outweighed the interests of the former hospital employer.

- The Supreme Judicial Court of Massachusetts, in *Miele v. Found. Med., Inc.*, 260 N.E.3d 294 (Mass. 2025), clarified that under the plain language of the Massachusetts Noncompetition Agreement Act, “[b]ecause forfeiture for competition agreements are expressly defined as a subset of noncompetition agreements, and nonsolicitation agreements are explicitly excluded from that category, solicitation cannot be reintroduced through the back door of ‘competitive activities’ without rendering the statute internally contradictory.”