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**MEMORANDUM**

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**To:** AAHKS  
**From:** Epstein Becker & Green, P.C.  
**Date:** May 4, 2024  
**Re:** Federal Trade Commission Finalizes Regulatory Ban of Non-compete Clauses

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On April 23, 2024, the Federal Trade Commission (FTC) voted to approve and release the draft of a Final Regulation (“Final Rule” or “the Rule”) that bans for-profit employers from using non-compete clauses. This summary covers elements of the Final Rule that may be relevant to AAHKS members, as well as the hospital and the health care industry more broadly.

**I. Key Take-Aways**

- The rule becomes effective September 4, 2024, 120 days following its formal publication.
- National employer groups have already challenged the Final Rule in federal courts to block its implementation before the effective date. The preponderance of legal opinion is that this Rule will never go into effect: federal courts will ultimately overturn the rule because Congress has never given the FTC the authority to regulate employment contracts.
- Regardless of federal regulation, members should recall that many states regulate or limit the use of non-competes in employment contracts, particularly as applied to physicians. **[See Attached 50-State Survey of Non-compete law].**
- AAHKS members should consult local legal counsel for any questions over existing non-compete provisions in their contracts. It is not uncommon to discover that some contracts include non-compete provisions that are barred by applicable state law.

**II. Background**

On January 5, 2023, the FTC released a proposed regulation that would ban for-profit employers<sup>1</sup> from using non-compete clauses. The FTC’s rationale for the proposed ban included

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<sup>1</sup> See discussion at section III.d.below.

the argument that non-competes reduce competition in labor markets, suppressing earnings and opportunity even for workers who are not directly subject to a non-compete. The FTC further argued that locking workers in place reduces innovation by decreasing the flow of information and knowledge among firms.

On April 19, 2023, AAHKS submitted its comment letter on the proposed rule. **[See Attached]**. AAHKS's general comments were:

- AAHKS opposes the application of non-compete provisions in physician employment contracts, as they undermine the physician-patient relationship and constrain the mobility and economic opportunities of new physicians;
- The practice of medicine should be viewed like other skilled professions with fiduciary-like obligations and responsibilities (i.e., attorneys) for whom non-compete provisions are impermissible;
- The physician-patient relationship is a unique professional responsibility and any new policy addressing physician employment should protect and enhance physician autonomy in treating patients in need, including patients' freedom to use their physician of choice;
- When working to retain employed physicians, large employers of physicians should consider all tools at their disposal in incentivizing employed physicians to remain at their employed practice; and
- AAHKS endorses continued development of state laws specifically addressing physician employment contracts and non-compete provisions. Such state laws are most likely to address local policy priorities and reflect specific economic and health system characteristics.

### III. Provisions of Final Rule

#### a. Non-compete Clauses Banned

The Rule prohibits employers from entering into new non-competes with workers on or after the effective date of the Rule. The rule also prohibits employers from enforcing existing non-competes with workers other than senior executives.<sup>2</sup>

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<sup>2</sup> The FTC defines "senior executive" as workers earning more than \$151,164 who are in a "policy-making position." The FTC estimates that less than 1% of workers are senior executives.

*b. Definitions*

The FTC proposes a straightforward explanation that a “non-compete clause” is “a contractual term between an employer and a worker that prevents the worker from seeking or accepting employment with a person, or operating a business, after the conclusion of the worker’s employment with the employer.” The proposed definition goes further by also setting forth a functional test for whether a contractual term is a “non-compete clause.”

*c. Preemption*

The proposed rule would preempt any inconsistent state or local law, noting that state and local laws are not “inconsistent” with the rule if they afford workers any protection that “is greater than the protection provided [under the Rule].”

*d. Limited Exceptions*

The Rule would not apply to:

- non-compete agreements with a person who is selling or otherwise transferring ownership of a business entity or its operating assets;
- customer or coworker non-solicits;
- reasonable “advance notice of resignation” requirements (clauses that require an employee to give notice of their resignation, during which time they remain an employee and owe their employer a duty of loyalty); or
- routine confidentiality agreements.

*e. Capturing Not-for-Profit Employers that Derive a Profit*

Opponents and proponents of the proposed rule noted that, as the FTC lacks authority over the business practices of non-for-profit entities, the non-compete ban would apply only to for-profit entities and thus create two problematic legal standards for those different kinds of employers.

In response, in the Final Rule, the FTC recognizes that it lacks jurisdiction over corporations “not organized to carry on business for its own profit or that of its members.” However, after an extensive discussion of the health care industry and, among others, nonprofit hospital systems, the Commission warned, “not all entities claiming tax-exempt status as nonprofits fall outside the Commission’s jurisdiction.” The FTC noted that it “looks to the source of the income, i.e., to whether the corporation is organized for and actually engaged in business

for only charitable purposes, and to the destination of the income, i.e., to whether either the corporation or its members derive a profit.” Unless an organization passes this “two-prong test,” the Commission insists they are bound by the Final Rule regardless of their claimed tax exemption.

#### **IV. Discussion of Health Care Within the Final Rule**

In justifying the Rule, the FTC argues that non-competes may reduce service quality and consumer choice. The FTC’s analysis in the Rule cites comments received from many physicians attesting to the harm to the doctor-patient relationship arising from non-competes. The Final Rule cites to AAHKS’ survey of members subject to non-competes.<sup>3</sup> The FTC noted opposition to the rule received from hospitals, physician practices, and surgery centers.

Many of these commenters stated that non-competes restrict physicians from leaving practices and increase the risk of retaliation if physicians object to the practices’ operations, poor care or services, workload demands, or corporate interference with their clinical judgment. Other commenters from the healthcare industry said that, like other industries, non-competes bar competitors from the market and prevent providers from moving to or starting competing firms, thus limiting access to care and patient choice. Physicians and physician organizations said non-competes contribute to burnout and job dissatisfaction, and said burnout negatively impacts patient care.

In addition, physicians and physician organizations stated that, to escape non-competes, physicians often leave the area, and that this severs many physician/patient relationships. These commenters stated that non-competes therefore cause patients to lose the knowledge, trust, and compatibility that comes with long-established relationships. These commenters also said that strong physician/patient relationships and continuity of care improve health outcomes, particularly for complex, chronic conditions or patients who need multiple surgeries.

#### **V. Next Steps**

##### *a. Effective Date*

On April 23, 2024, the FTC voted 3-2 to approve the Final Rule. Following the vote, a copy of the Final Rule was publicly released. The Rule will be considered official when it is published in the Federal Register, likely in late-April or early-May. The Rule becomes effective 120 days after it is published in the Final Rule.

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<sup>3</sup> See 89 Fed. Reg. 38347 (May 7, 2024).

*b. Legal Challenges are Promised. Prospects for the Rule are Poor*

There are serious questions about the FTC's authority to regulate non-competes under Section 5 of the Federal Trade Commission Act, especially following the Supreme Court's 2022 decision in *West Virginia v. Environmental Protection Agency*, which applied the "major questions doctrine" to strike down an environmental regulation on the basis that the EPA did not have "clear congressional authority" to issue a rule concerning an issue of "great political significance" that would affect "a significant portion of the American economy."

The Chamber of Commerce has stated that it will challenge the rule in federal courts. The Chamber will likely be joined by other national employer groups. The American Hospital Association stated that it opposes the Rule and expects it to be eventually overturned by federal courts. Employers will seek, and federal courts may grant, a nation-wide injunction that bars the FTC from enforcing the Rule while litigation proceeds. Final resolution of the Rule's status in the courts may take years, especially as the case is expected to make its way to the Supreme Court.

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April 19, 2023

**VIA E-MAIL FILING**

Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue NW  
Suite CC-5610 (Annex C)  
Washington, DC 20580

**RE: Non-Compete Clause Rulemaking, Matter No. P201200**

The American Association of Hip and Knee Surgeons (AAHKS) appreciates the opportunity to submit comments to the Federal Trade Commission (FTC) on the proposed rule on “*Non-Compete Clause Rulemaking, Matter No. P201200*”, (the “Proposed Rule”).

AAHKS is the foremost national specialty organization of more than 4,800 physicians with expertise in total joint arthroplasty (TJA) procedures. Our members account for the majority of total hip and total knee arthroplasty procedures each year. Many of our members conduct research in this area and are experts in using evidence based medicine to better define the risks and benefits of treatments for patients suffering from lower extremity joint conditions. In all of our comments, AAHKS is guided by its three principles:

- Payment reform is most effective when physician-led;
- The burden of excessive physician reporting on metrics detracts from care; and
- Patient access, especially for high-risk patients, and physician incentives must remain a focus.

Our general comments are summarized as follows:

- AAHKS opposes the application of non-compete provisions in physician employment contracts, as they undermine the physician-patient relationship and constrain the mobility and economic opportunities of new physicians;
- The practice of medicine should be viewed like other skilled professions with fiduciary-like obligations and responsibilities (i.e., attorneys) for whom non-compete provisions are impermissible;
- The physician-patient relationship is a unique professional responsibility and any new policy addressing physician employment should protect and enhance physician

autonomy in treating patients in need, including patient freedom to use their physician of choice;

- When working to retain employed physicians, large employers of physicians should consider all tools at their disposal in incentivizing employed physicians to remain at their employed practice;
- AAHKS endorses continued development of state laws specifically addressing physician employment contracts and non-compete provisions. Such state laws are most likely to address local policy priorities and reflect specific economic and health system characteristics.

#### **I. AAHKS Prioritizes the Physician-Patient Relationship and Physician Autonomy**

We thank the FTC for its work to highlight and to attempt to address the problem of non-compete clauses, contractual terms between an employer and a worker that prevents the worker from seeking or accepting employment with a person, or operating a business, after the conclusion of the worker's employment with the employer. Our comments on non-compete clauses offer the perspective of physicians, and by connection, our patients.

First and foremost, AAHKS members stress that the impact on patients should be a primary consideration when contemplating any regulatory action (expanding or contracting) affecting the medical profession and its employment arrangements. Medicine is unique among professions in that it not only involves a special relationship of trust with our clients, but that relationship also involves the provision and recommendation of medical care, often over the most serious and personal matters. Physicians are intimately familiar with their patients, sometimes treating multiple generations within a single family.

AAHKS members treat their patients throughout the duration of the surgical process, from consulting as to whether surgery is needed or if other less invasive options may suffice, assisting patients to prepare for surgery which can include lifestyle changes, and consulting with numerous other specialists in order to reduce risks, maximize surgical outcomes, and guide the road into recovery. Our patients share countless stories that the hip or knee replacement surgeries not only give them their freedom, but that they are gifted an opportunity to live a wholly new life they never could have imagined before the surgery. Mobility is an inherent part of autonomy.

Though the medical profession and health care system are necessarily enabled by revenue, our patients are not a commodity. Because joint replacement surgery is not an instance of care but an involved process for both physician and patient, any hip or knee surgeon who transitions from one practice to another is likely still in the process of preparing some patients for surgery, while helping others in their recovery process.

All things being equal, many patients would likely choose to maintain their doctor-patient relationship even after their doctor changes practices. But non-compete agreements for physicians typically include a "non-compete radius," meaning physicians cannot work for another

practice within so many miles of their current practice. Many physician non-compete provisions impose a radius of between 0-50 miles, but some can range between 51-99 miles, or more.<sup>1</sup>

We are very concerned about the effect these sorts of non-compete provisions may have on patient care and patient choice. Likewise, we are concerned about similar restraints on patient care and choice arising from the duration of non-competes, and the effects non-competes can have in rural areas or other areas with only one large employer, where physicians would be restrained from introducing any competition.

Other professional industries have taken a self-regulation approach to eliminating non-compete agreements within their profession. Notably, lawyers, whose relationships with their clients involve the same intimate levels of trust as physicians and their patients, are prohibited by the American Bar Association's Model Rules of Professional Conduct from entering into any agreement that "restricts the right of a lawyer to practice after termination of the relationship."<sup>2</sup> While no such rule exists for physicians, professional medical associations do issue binding rules on physicians, such as the American Medical Association's Code of Medical Ethics. AAHKS supports the medical profession opening discussions to determine the profession's own, collective outlook and the relative costs and benefits of maintaining or eliminating non-compete agreements from the practice of medicine.

AAHKS members support a medical market with the patient at the center that enables physicians to provide the care they determine to be best for their particular patients. This means allowing physicians themselves to determine the services and care their patients need, determining the proper timing for a particular procedure, and ultimately, determining the setting and practice that best enables the physician to provide that care. Physicians may find it in their best interest to leave one practice to join another, even after signing a non-compete agreement with their employer. In these instances, some physicians and AAHKS members may find non-compete agreements a barrier to the type of care they wish to provide to their patients in the communities they know best. AAHKS is firmly committed to supporting physicians finding ways to provide the care they wish to provide to their patients, regardless of employer contract provisions.

## **II. Employers Should Harness the Full Range Incentives to Retain Employed Physicians**

Practice groups and physician employers are an essential part of the health care system and provide the physical settings in which physicians deliver care to patients, as well as the supporting medical and non-medical staff required to deliver care, and many of the necessary materials and capital to care for patients. AAHKS ultimately seeks balance between the interests of physicians in autonomously caring for patients, and the legitimate financial interests of health care employers wishing to maintain operations and facilitate the care of patients. AAHKS members note that, whether or not an employer of physicians utilizes non-compete agreements

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<sup>1</sup> See AAHKS poll results below.

<sup>2</sup> Model Rules of Prof'l Conduct § 5.6(a) (Am. Bar Ass'n 1983).

with their employed physicians, there are alternative means to incentivize physician employment and retention without ever turning to non-compete agreements.

To incentivize physicians to remain with a practice, the practice should consider increasing the salaries of employed physicians as if they were bound by a non-compete agreement. The resulting increase in earnings, and correlating increase in autonomy, would certainly be highly valued by employed physicians, and could lead to greater physician retention. Additional incentives could include increased vacation and personal days for employed physicians who do not sign a non-compete agreement, and other flexibilities and benefits identified at by the practice and negotiated with the physician.

Our members note that, among physicians who have signed non-compete arrangements, there are increased levels of burnout and lack of trust with their employer. Employers should consider the impact of non-compete provisions on physician morale. In early 2023, AAHKS conducted an internal poll of our membership’s experience and attitudes towards non-competes. The results are as follows:

- 72% of respondents have a current employment contract that includes a non-compete provision
- 12% report a non-compete radius of 10 miles or fewer
- 54% report a non-compete radius of 11 – 50 miles
- 30% report a non-compete radius of 51-99 miles
- 5% report a non-compete radius of 100 miles or more
- 90% report that the on-compete clause is in effect for 1-2 years following the end of the employment relationship

Further, the Proposed Rule cites research conducted on physicians who work under non-compete agreements. The research finds that, for physicians, non-compete clauses are associated with greater earnings and greater earnings growth.<sup>3</sup> As has been noted, this study has a flaw in not limiting itself to study only non-compete clauses that are enforceable under local law, or otherwise accounting for variation in enforceability.

### **III. State Regulation of Non-Compete Agreements Better Accounts for Geographic Priorities**

AAHKS supports continued action by state legislatures to establish policies for physician non-compete provisions that reflect the priorities and values of the impacted local physicians, patients, and employers. Some states have decided, as the FTC has proposed, that non-compete agreements are inappropriate for physicians. States including Massachusetts, New Mexico, South

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<sup>3</sup> Kurt Lavetti, Carol Simon, & William D. White, *The Impacts of Restricting Mobility of Skilled Service Workers Evidence from Physicians*, 55 J. Hum. Res. 1025, 1051 (2020).

Dakota and Tennessee have all enacted limitations on the kinds of non-compete agreements permissible to impose on physicians.

These range from Massachusetts, which has banned physician non-compete agreements entirely, to Tennessee, which has prohibited specific non-compete details, including durations longer than two years or a geographic radius greater than ten miles. As discussed above, the nature of the physician-patient relationship justifies treating physician employment and issues surrounding non-compete agreements as unique and separate from other employment contracts. State-based regulation has the additional advantage of being able to uniformly apply the same non-compete policy across for-profit and not-for-profits employers. AAHKS supports the states that have taken these sensitivities into account when drafting their legislative solutions.

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AAHKS appreciates your consideration of our comments. If you have any questions, you can reach Mike Zarski at [mzarski@aahks.org](mailto:mzarski@aahks.org) or Joshua Kerr at [jkerr@aahks.org](mailto:jkerr@aahks.org).

Sincerely,



Javad Parvizi, MD, FRCS  
President



Michael J. Zarski, JD  
Executive Director

# 50-State Noncompete Survey

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EPSTEIN  
BECKER  
GREEN

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Our survey aims to provide a summary of salient points regarding noncompete law for each state and the District of Columbia.

# Epstein Becker Green is pleased to provide the following 50-state survey of noncompete law in the United States

In recent years, there has been unprecedented interest and activity regarding noncompetes and other restrictive covenants, as legislative, regulatory, and judicial authorities at both the state and federal levels have weighed in on the enforceability of such restrictive covenants in various forms, and even whether noncompetes are appropriate at all. Noncompete law is now evolving more rapidly than ever, and businesses, human resources professionals, legal practitioners, and others need to stay informed on these issues.

Our survey aims to provide a summary of salient points regarding noncompete law for each state and the District of Columbia. While we hope the survey is useful in providing a quick understanding to the reader, it does not constitute legal advice and is not a substitute for more in-depth consideration, in consultation with legal counsel, of particular circumstances and their legal ramifications. There are many subtleties with respect to legal concepts in this area and how courts will consider claims under equitable principles. Indeed, as practitioners in this area know well, noncompete law is very fact-intensive, and the same contractual language can receive different treatment depending on the jurisdiction (or even the judge), the circumstances of the employee's departure, as well as economic and political conditions. For example, the survey includes a column entitled "Judicial Modification Permitted?" In this context, the terms "reformation" or "blue penciling" of a noncompete agreement can mean different

things to different judges in different states, who may use the term "blue penciling" when referring to reformation, and vice versa. While we state in our survey whether some form of modification is allowed in the various states, the applicability of that modification will depend on case law and the facts presented and should be explored with the assistance of counsel. This is just one example in an area of law that is rarely black and white.

We hope you find this resource to be useful and invite you to contact us for advice as you seek to navigate these interesting yet complicated issues.

We also invite you to subscribe to our [Trade Secrets & Employee Mobility blog](#) for legislative and judicial updates and analysis of interesting and cutting-edge cases, and to our monthly podcast on the future of trade secrets and noncompetes, [Spilling Secrets](#), which features a panel of attorneys talking about real-life problems, developments, and strategies when dealing with trade secrets, noncompetes, and other types of restrictive covenants.

To get in touch with a member of our Trade Secrets and Employee Mobility team, visit us at [www.ebglaw.com/services/employment-labor-workforce-management/trade-secrets-employee-mobility/#our-team](http://www.ebglaw.com/services/employment-labor-workforce-management/trade-secrets-employee-mobility/#our-team).



STATE	Employee Noncompetes Permissible?	General Noncompete Statute?	Industry-Specific Statutes or Rules?	Other Excluded Employees?	Continued Employment: Sufficient Consideration?	Notice Requirements	Other Unique Requirements	Customer and Employee Non-Solicits Permissible?	Enforceable Against Terminated Employees?	Judicial Modification Permitted? (Blue Pencil and/or Reformation)	Tolling Permissible?
<b>ALABAMA</b>	Yes	Ala Code § 8-1-190-197 (effective January 1, 2016)	Lawyers (Ala R Prof C 5 6); Mediators (Ala Code of Ethics for Mediators Stnd 11)	N/A	Yes	N/A	Must be reduced to writing and signed by all parties	Yes	Unresolved	Yes	Yes
<b>ALASKA</b>	Yes	No	Lawyers (AK R. Prof. C. 5.6)	N/A	Unresolved	N/A	N/A	Yes	Unresolved	Yes	Unresolved
<b>ARIZONA</b>	Yes	No	Broadcasting industry (Labor § 23-494); Lawyers (AZ R. Prof. C. 5.6)	N/A	Yes	N/A	N/A	Yes	Unresolved	Yes	Unresolved
<b>ARKANSAS</b>	Yes	AR Code § 4-75-101	Licensed medical professionals (Arkansas Code Title 17, Subtitle 3); Lawyers (AR R. Prof. C. 5.6);	N/A	Yes	N/A	N/A	Yes	Probably not	Yes	Unresolved
<b>CALIFORNIA</b>	No, with narrow exceptions in the sale of a business context or dissolution or disassociation relating to a partnership or LLC	Cal. Bus. & Prof. Code § 16600, et seq.	Entertainment Industry (Cal. Labor Code § 2855); Lawyers (Cal. R. Prof. C. 5.6)	N/A	N/A	N/A	N/A	No, with narrow exceptions in the sale of a business context or dissolution or disassociation relating to a partnership or LLC	No	N/A	Probably not
<b>COLORADO</b>	Yes	C.R.S. § 8-2-113 (amendments effective August 10, 2022)	Physicians (C.R.S. § 8-2-113(3)); Lawyers (Col. R. Prof. C. 5.6)	Minimum income thresholds for agreements entered into on or after August 10, 2022	Yes	For agreements entered into on or after August 10, 2022, before acceptance of an offer of employment for new or prospective workers: at least 14 days before the effective date of restrictions for existing workers. Must provide separate written notice in either case.	Penalties and potential criminal liability for violations of statute; aggrieved workers may seek injunctive relief and attorneys' fees; out-of-state choice-of-law and venue provisions are unenforceable.	Yes, subject to minimum income thresholds for agreements entered into on or after August 10, 2022	Unresolved	Yes	No
<b>CONNECTICUT</b>	Yes	No	Security Guards (Conn. Gen. Stat. Ann. § 31-50a); Broadcasters (Conn. Gen. Stat. Ann. § 31-50b); Physicians (Conn. Gen. Stat. Ann. § 20-14p); Home Health Care, Companion, or Homemaker Service Workers (Conn. Gen. Stat. Ann. § 20-681); Lawyers (Conn. R. Prof. C. 5.6)	N/A	Generally no, but unsettled as to at-will employees	N/A	N/A	Yes	Yes	Yes, but only if agreement states that terms are severable	No
<b>DELAWARE</b>	Yes	No	Physicians (Del. Code Ann. tit. 6, § 2707); Lawyers (Del. R. Prof. C. 5.6)	N/A	Yes	N/A	N/A	Yes	Yes	Yes	Yes



STATE	Employee Noncompetes Permissible?	General Noncompete Statute?	Industry-Specific Statutes or Rules?	Other Excluded Employees?	Continued Employment: Sufficient Consideration?	Notice Requirements	Other Unique Requirements	Customer and Employee Non-Solicits Permissible?	Enforceable Against Terminated Employees?	Judicial Modification Permitted? (Blue Pencil and/or Reformation)	Tolling Permissible?
<b>DISTRICT OF COLUMBIA</b>	Yes	D.C. Official Code § 32-581.01, et seq. (effective October 1, 2022)	Broadcasters (D.C. Act 24-526), Medical Specialists (D.C. Official Code § 32-581.03); Lawyers (D.C. R. Prof. C. 5.6)	Minimum income thresholds for agreements entered into on or after October 1, 2022	Yes	For agreements entered into on or after October 1, 2022, employer must provide any non-compete provision (1) in writing and (2) at least 14 days before the start of employment or the execution of the agreement. Employer must also simultaneously provide specific notice with the proposed non-compete provision.  Must provide a written copy of any workplace policy that includes one or more exceptions to the statutory definition of a "non-compete provision" (1) within 30 days after the employee's acceptance of employment; (2) to all current DC-based employees by October 31, 2022; and (3) any time the employer changes the policy containing the non-compete provision.	Anti-moonlighting provisions only permitted if the employer reasonably believes the outside employment could (i) result in the disclosure or use of proprietary information; (ii) cause a conflict of interest; (iii) constitute a "conflict of commitment" for an employee of a higher education institution; or (iv) impair the employer's ability to comply with federal or District laws or another contract.	Yes	Unresolved	Yes	Yes
<b>FLORIDA</b>	Yes	Fla. Stat Ann § 542.335	Physicians (Fla. Stat. Ann. § 542.336); Mediators (Fla. St. Mediator Rule 10.680); Lawyers (Fla. R. Prof. C. 4-5.6)	N/A	Yes	N/A	N/A	Yes	Yes	Yes (required)	Yes
<b>GEORGIA</b>	Yes	Ga. Code Ann. § 13-8-50, et seq.	Lawyers (Ga. R. Prof. C. 5.6)	Only enforceable against employees who regularly solicit customers, engage in sales, perform the duties of a key employee, or have the duty of managing a department and regularly direct the work of employees and have the authority to hire or fire them	Yes	N/A	N/A	Yes (must include explicit geographic limitations in employee non-solicitation and no-hire covenants)	Yes	Yes	Only with express contractual provision, and even then not always



STATE	Employee Noncompetes Permissible?	General Noncompete Statute?	Industry-Specific Statutes or Rules?	Other Excluded Employees?	Continued Employment: Sufficient Consideration?	Notice Requirements	Other Unique Requirements	Customer and Employee Non-Solicits Permissible?	Enforceable Against Terminated Employees?	Judicial Modification Permitted? (Blue Pencil and/or Reformation)	Tolling Permissible?
HAWAII	Yes	Haw. Rev. Stat. § 480-4	Technology Workers (HRS § 480-4(d)); Lawyers (Hi. R. Prof. C. 5.6)	N/A	Yes	N/A	N/A	Employee non-solicitation agreements are allowable except for employees of a technology business. It's unclear whether customer non-solicitation agreements are allowable.	Unresolved	Yes	Unresolved
IDAHO	Yes	Idaho Code § 44-2701-2704	Lawyers (Id. R. Prof. C. 5.6)	Only enforceable against "key employees" or "key independent contractors"	Yes, (but not for noncompetes over 18 months)	N/A	N/A	Yes	Yes	Yes	Unresolved
ILLINOIS	Yes	820 ILCS 90/1, et seq. (effective January 1, 2022)	Broadcasters (820 ILCS 17/10(a)); Government Contractors (30 ILCS 500/50-250); Nurses (225 ILCS 510/1); Lawyers (IL R. Prof. C. 5.6)	Minimum income thresholds for agreements entered into on or after January 1, 2022, and an employer may not enter into a noncompete or non-solicit with an individual terminated or furloughed due to circumstances related to COVID-19 or similar circumstances, unless enforcement includes statutorily specified compensation during the restricted period; employers may not enter into noncompetes with employees covered by collective bargaining agreements under the Illinois Public Labor Relations Act or the Illinois Educational Labor Relations Act, or with rank-and-file employees in the construction industry	It can be. For agreements entered into on or after January 1, 2022, adequate consideration for a restrictive covenant means (1) the employee worked for at least two years after the employee signed the agreement or (2) the employer otherwise provided consideration adequate to support a restrictive covenant, such as a period of employment plus additional professional or financial benefits or professional or financial benefits alone. Although this statutory requirement technically only applies to agreements entered into on or after January 1, 2022, it essentially codifies pre-existing common law applicable to all restrictive covenants.	For agreements entered into on or after January 1, 2022, at least 14 calendar days before employment begins	For agreements entered into on or after January 1, 2022, employers must advise employees in writing to seek advice from counsel prior to signing any noncompete or non-solicitation agreement.	Yes, subject to minimum income thresholds for agreements entered into on or after January 1, 2022	Yes	Yes	Yes
INDIANA	Yes	No	Physicians (Ind. Code § 25-22.5-5.5); Lawyers (Ind. R. Prof. C. 5.6)	N/A	Yes	N/A	N/A	Employee non-solicitation agreements are allowable but limited to only employees who have access to or possess any knowledge that would give a competitor an unfair advantage; customer non-solicitation agreements are allowable.	Yes	Yes	Only with express contractual provision



STATE	Employee Noncompetes Permissible?	General Noncompete Statute?	Industry-Specific Statutes or Rules?	Other Excluded Employees?	Continued Employment: Sufficient Consideration?	Notice Requirements	Other Unique Requirements	Customer and Employee Non-Solicits Permissible?	Enforceable Against Terminated Employees?	Judicial Modification Permitted? (Blue Pencil and/or Reformation)	Tolling Permissible?
IOWA	Yes	No	Healthcare Employment Agency Workers (Iowa Code § 1350.2); Mental Health Professionals (Iowa Code ch. 147.164); Lawyers (Ia. R. Prof. C. 32:5.6)	N/A	Yes	N/A	N/A	Yes	Yes, if with cause	Yes	Yes
KANSAS	Yes	No	Lawyers (Kan. R. Rel. Disc. Att. 5.6)	N/A	Yes	N/A	N/A	Yes	Unresolved	Yes	Only with express contractual provision
KENTUCKY	Yes	No	Lawyers (SCR 3.130(5.6)); Healthcare Services Agency Workers (Ky. Rev. Stat. § 216.724)	N/A	No	N/A	N/A	Yes	Yes	Yes	Yes
LOUISIANA	Yes	La. Rev. Stat. Ann. § 23:921	Automobile Salesmen (La. R. S. 23:921(I)); Real Estate Brokers (La. R.S. 36:1448.1); Lawyers (La. R. Prof. C. 5.6)	N/A	Yes	N/A	Must designate specific parishes, municipalities, and/or parts thereof within which the restriction applies; the employer must conduct a similar business within that geographic area; and the duration cannot exceed two years.	Yes	Yes	Yes, but agreement must contain a severability clause	Unresolved
MAINE	Yes	Me. Rev. Stat. tit. 26, c. 7 § 599-A (effective September 18, 2019)	Broadcasters (D23 Me. Rev. Stat. tit. 26, § 599); Veterinarians (Me. Rev. Stat. tit. 26, § 599-A); Lawyers (Me. R. Prof. C. 5.6)	Minimum income thresholds for agreements entered into on or after September 18, 2019	Yes	For agreements entered into on or after September 18, 2019, an employer must disclose prior to an offer of employment that a noncompete agreement will be required for new employees; an employer must provide a copy of the noncompete agreement not less than three business days prior to the date it must be signed for existing or prospective employees.	For agreements entered into on or after September 18, 2019, noncompete restrictions do not take effect until after one year of employment with the company or a period of six (6) months from the date the agreement was signed, whichever is later.	Yes	Probably	Yes	Unresolved
MARYLAND	Yes	Md. Code Ann., Lab. & Empl. § 3-716(a) (effective October 1, 2019)	Lawyers (Md. R Attorneys Rule 19-305.6)	Minimum income thresholds for agreements entered into on or after October 1, 2019	Yes	N/A	N/A	Yes	Probably not	Yes	



## MASSACHUSETTS

## MICHIGAN

## MINNESOTA

## MISSISSIPPI

## MISSOURI

STATE	Employee Noncompetes Permissible?	General Noncompete Statute?	Industry-Specific Statutes or Rules?	Other Excluded Employees?	Continued Employment: Sufficient Consideration?	Notice Requirements	Other Unique Requirements	Customer and Employee Non-Solicits Permissible?	Enforceable Against Terminated Employees?	Judicial Modification Permitted? (Blue Pencil and/or Reformation)	Tolling Permissible?
MASSACHUSETTS	Yes	M.G.L. c. 149, § 24L (effective October 1, 2018)	Physicians (M.G.L. c. 112, § 12X); Nurses (M.G.L. c. 112, § 74D); Psychologists (M.G.L. c. 112, § 129B); Social Workers (M.G.L. c. 112, § 135C); Broadcasters (M.G.L. c. 149, § 186); Lawyers (Mass. R. Prof. C. 5.6)	Noncompetes entered into on or after October 1, 2018 are unenforceable against employees classified as nonexempt under the Fair Labor Standards Act; undergraduate or graduate student working part time; employees who are terminated without cause or laid off; employees who are 18 and under	No for agreements entered into on or after October 1, 2018 (must provide "fair and reasonable consideration independent from the continuation of employment"); Yes for agreements entered into before	For agreements entered into on or after October 1, 2018, the earlier of when an offer of employment is made or 10 business days before the first day of employment for new employees; 10 business days before the effective date for existing employees.	Effective October 1, 2018, (1) noncompetes are limited to 12 months following the employee's departure, unless they have breached a fiduciary duty to the employer or engaged in misappropriation (in which case the duration can be up to two years following separation); (2) noncompetes must be signed by both the employer and employee and must expressly state that the employee has a right to consult counsel before signing the agreement; (3) noncompetes cannot apply another state's law if the employee lived in Massachusetts for the last 30 days before cessation of their employment; (4) actions to enforce noncompete agreements must be initiated in the employee's home county or in Suffolk County; and (5) garden leave or other mutually agreed consideration is required for new employees, and "fair and reasonable" consideration is required for existing employees.	Yes	Yes, for agreements entered into before October 1, 2018; only if for cause or included in severance agreement on or after October 1, 2018	Yes	For agreements entered into before October 1, 2018, only with the express contractual provision; for agreements entered into on or after October 1, 2018, an extension of up to two years is permissible if the employee violated a fiduciary duty or unlawfully took company property.
MICHIGAN	Yes	Mich. Comp. Laws § 445.774a	Lawyers (Mi. R. Prof. C. 5.6)	N/A	Yes	N/A	N/A	Yes	Yes	Yes	Yes
MINNESOTA	Pre-July 1, 2023 – Yes Post-July 1, 2023 – No, with narrow exception in the sale of a business context or dissolution of a partnership or LLC	Minn. Stat. 181.988 (effective July 1, 2023)	Lawyers (Mn. R. Prof. C. 5.6)	N/A	Pre-July 1, 2023 – Yes (if bargained for and the employee receives substantial economic or personal benefits) Post-July 1, 2023 – N/A	N/A	Out-of-state choice-of-law and venue provisions are unenforceable; attorneys' fees available to employees who enforce rights under law	Yes	Yes (non-solicits only post-July 1, 2023)	Yes (non-solicits only post-July 1, 2023)	Infrequently
MISSISSIPPI	Yes	No	Lawyers (Mi. R. Prof. C. 5.6)	N/A	Yes (if for sufficient duration)	N/A	N/A	Yes	Yes	Yes	Only with express contractual provision
MISSOURI	Yes	Mo. Stat. Ann. § 431.202	Secretaries, Clerks (Mo. Rev. Stat. § 431.202); Lawyers (Mo R. Prof. C. Rule 4-5.6)	N/A	Conflicting authorities	N/A	N/A	Yes	Judicial discretion	Yes	No



STATE	Employee Noncompetes Permissible?	General Noncompete Statute?	Industry-Specific Statutes or Rules?	Other Excluded Employees?	Continued Employment: Sufficient Consideration?	Notice Requirements	Other Unique Requirements	Customer and Employee Non-Solicits Permissible?	Enforceable Against Terminated Employees?	Judicial Modification Permitted? (Blue Pencil and/or Reformation)	Tolling Permissible?
<b>MONTANA</b>	Yes	Mont. Code Ann. § 28-2-703, et seq.	Lawyers (Mt. R. Prof. C. 5.6)	N/A	No	N/A	N/A	Yes	No	Probably	Unresolved
<b>NEBRASKA</b>	Yes	No	Lawyers (Neb R. Prof. C. § 3-505.6)	N/A	Yes	N/A	N/A	Yes (however, cannot restrict solicitation of customers with whom employee did not do business or have personal contact)	Unresolved	No	Unresolved
<b>NEVADA</b>	Yes	Nev. Rev. Stat. § 613.195-200 and AB 276, Section 1	Lawyers (Nev. R. Prof. C. 5.6)	Unenforceable against employees paid solely on an hourly wage basis, exclusive of any tips or gratuities	Yes	N/A	Unenforceable against employees paid solely on an hourly wage basis, exclusive of any tips or gratuities	Yes	Unresolved, unless "the termination of the employment of an employee is the result of a reduction of force, reorganization or similar restructuring of the employer," in which case a noncompete "is only enforceable during the period in which the employer is paying the employee's salary, benefits or equivalent compensation, including, without limitation, severance pay."	Yes, and must not impose undue hardship on the employee	Yes
<b>NEW HAMPSHIRE</b>	Yes	N.H. Rev. Stat. § 275:70 and 275:70-a (effective September 8, 2019)	Physicians (N.H. Rev. Stat. § 329:31-a); Nurses (N.H. Rev. Stat. § 326-B:45-a); Podiatrists (N.H. Rev. Stat. § 315:18); Lawyers (N.H. R. Prof. C. 5.6)	Minimum income thresholds for agreements entered into on or after September 8, 2019	Yes	For new employees, employers must provide a copy of the noncompete agreement to a potential employee before the employee accepts an offer of employment.	N/A	Yes	Yes	Yes	No
<b>NEW JERSEY</b>	Yes	No	Physicians (N.J.A.C. 13:42-10.16); Psychologists (N.J. Admin. Code § 13:42-10.16); Lawyers (N.J. RPC 5.6)	N/A	Yes	N/A	N/A	Yes	Yes	Yes	No
<b>NEW MEXICO</b>	Yes	No	Health Care Practitioner Agreements (N.M.S.A. 1978, § 24-11-1, et seq.); Lawyers (N.M. R. Prof'l Cond. 5.6)	N/A	Unclear	N/A	N/A	Yes	Unresolved	Probably	No
<b>NEW YORK</b>	Yes	No	Broadcasters (N.Y. Lab. Law § 202-k); Lawyers (N.Y. R. Prof. Conduct 5.6)	N/A	Yes	N/A	N/A	Yes	Yes (split of authority as to whether cause is required)	Yes	Yes



STATE	Employee Noncompetes Permissible?	General Noncompete Statute?	Industry-Specific Statutes or Rules?	Other Excluded Employees?	Continued Employment: Sufficient Consideration?	Notice Requirements	Other Unique Requirements	Customer and Employee Non-Solicits Permissible?	Enforceable Against Terminated Employees?	Judicial Modification Permitted? (Blue Pencil and/or Reformation)	Tolling Permissible?
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## NORTH CAROLINA

Yes	N.C. Gen. Stat. § 75-1, et seq.	Locksmiths (21 NCAC 29.0502(e)) (governs both non-competes and non-solicits); Health Care Workers (common law "substantial harm" to public health standard); Lawyers (NC R BAR Ch. 2, Rule 5.6)	N/A	No (maybe for a specified duration)	N/A	Must be in writing and signed by the party agreeing to the restraint in trade	Yes	Yes	Yes	Unresolved
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## NORTH DAKOTA

No, with narrow exceptions in the sale of a business context or dissolution or disassociation relating to a partnership or LLC	N.D. Cent. Code § 9-08-06	Lawyers (N.D.R. Prof. C. 5.6)	N/A	No	N/A	N/A	Employee only	N/A	N/A	N/A
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## OHIO

Yes	No	Lawyers (Ohio R. Prof. C. 5.6)	N/A	Yes	N/A	N/A	Yes	Yes	Yes	Yes
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## OKLAHOMA

No, with narrow exceptions in the sale of a business context or dissolution or disassociation relating to a partnership or LLC	OK Stat. § 15-219A	Lawyers (Oklahoma Statutes, Title 5, chapter 1, Appendix 3-A- Oklahoma Rules of Professional Conduct, Rule 5.6)	N/A	N/A	N/A	N/A	Yes	Unresolved	Yes, but will not cure underlying defects	Only with express contractual provision
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## OREGON

Yes	ORS 653.295 (amendments effective January 1, 2022)	Home Health Care Employees (ORS 653.295(1)(e)); Lawyers (Or. R. Prof. C. 5.6)	Minimum income thresholds	No	For agreements entered into on or after January 1, 2022, at least two weeks before the first day of employment; employer must provide a signed, written copy of the terms of the noncompete within 30 days after the date of employee's termination.	Must not exceed 12 months	Yes	Yes	Yes	No
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## PENNSYLVANIA

Yes	No	Lawyers (Pa. R. Prof. C. 5.6)	N/A	No	N/A	N/A	Yes	Yes, but reason for termination will be taken into account	Yes	No
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## RHODE ISLAND

Yes	R.I. Gen. Laws § 28-59-1, et seq.	Physicians (R.I. Gen. Laws § 5-37-33); Lawyers (R.I. R. Prof. C. 5.6)	Minimum income thresholds; unenforceable against nonexempt employees, minors, and students in internships or short-term employment while enrolled at an educational institution	Probably	N/A	N/A	Yes	Unresolved	Yes	Yes
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STATE	Employee Noncompetes Permissible?	General Noncompete Statute?	Industry-Specific Statutes or Rules?	Other Excluded Employees?	Continued Employment: Sufficient Consideration?	Notice Requirements	Other Unique Requirements	Customer and Employee Non-Solicits Permissible?	Enforceable Against Terminated Employees?	Judicial Modification Permitted? (Blue Pencil and/or Reformation)	Tolling Permissible?
<b>SOUTH CAROLINA</b>	Yes	No	Lawyers (Rule 5.6, RPC, Rule 407, SCACR)	N/A	No	N/A	N/A	Yes	Yes	Probably	Unresolved
<b>SOUTH DAKOTA</b>	Yes	S.D. Codified Laws § 53-9-8, et seq.	Health Care Providers (S.D. Codified Laws § 53-9-11.1); Independent Contractor Captive Insurance Agents (S.D. Codified Laws § 53-9-12); Lawyers (S.D. R. of Professional Ethics, Rule 5.6)	N/A	Yes	N/A	N/A	Yes	Yes	Yes, but disfavored	Unresolved
<b>TENNESSEE</b>	Yes	No	Health Care Providers (Tenn. Code Ann. § 63-1-148); Lawyers. (Tenn. Sup. Ct. R. 8, RPC 5.6)	N/A	Yes (if employment continued for sufficient duration)	N/A	N/A	Yes	Yes	Yes	Unresolved
<b>TEXAS</b>	Yes	Tex. Bus. & Com. Code § 15.50-52	Physicians (Tex. Bus. Com. Code § 15.50(b)); Lawyers (Tex. Disciplinary R. Prof. Conduct 5.6)	N/A	No	N/A	N/A	Yes	Yes	Yes; however, when a court modifies an agreement, the employer will be limited to injunctive relief (i.e., No damages for breach of the agreement)	Only with express contractual provision
<b>UTAH</b>	Yes	Utah Code § 34-51-101, et seq.	Broadcasting employees (Utah Code § 34-51-201(2)); Lawyers (Utah R. Prof. C. 5.6)	N/A	Yes	N/A	N/A	Yes	Yes	Unresolved	Unresolved
<b>VERMONT</b>	Yes	No	Beauticians/ Cosmetologists (26 Vt. Stat. § 281(c)); Lawyers (Vt. R. Prof. C. 5.6)	N/A	Yes	N/A	N/A	Yes	Yes	No, but may be possible if contract specifically provides for it	No
<b>VIRGINIA</b>	Yes	Va. Code Ann. § 40.1-28.7:8	Lawyers (VA R S CT PT 6 § 2 RPC Rule 5.6.)	Minimum income thresholds for agreements entered into on or after July 1, 2020	Yes	Employers must post a notice of Va. Code Ann. § 40.1-28.7:8 at all times.	N/A	Yes	Yes	No	Yes



STATE	Employee Noncompetes Permissible?	General Noncompete Statute?	Industry-Specific Statutes or Rules?	Other Excluded Employees?	Continued Employment: Sufficient Consideration?	Notice Requirements	Other Unique Requirements	Customer and Employee Non-Solicits Permissible?	Enforceable Against Terminated Employees?	Judicial Modification Permitted? (Blue Pencil and/or Reformation)	Tolling Permissible?
<b>WASHINGTON</b>	Yes	WA ST 49.62-005-900 (effective January 1, 2020)	Broadcasting (WA ST § 49.44.190); Lawyers (WA R. Prof. C. 5.6)	Minimum income thresholds for agreements entered into on or after January 1, 2020 and unenforceable if employee is terminated because of a layoff unless during its term the employer provides compensation equivalent to the employee's base salary at the time of termination, less any compensation earned through subsequent employment	No	For agreements entered into on or after January 1, 2020, employer must disclose terms before or during offer acceptance, including if enforceable at a later date.	Term more than 18 months post-termination is presumed unreasonable	Yes	Yes, but if there is a layoff, an employer must provide compensation equivalent to the employee's base salary at the time of termination for the entire period of enforcement	Yes	Unresolved
<b>WEST VIRGINIA</b>	Yes	No	Physicians (W. Va. Code 47-11E-1-5); Lawyers (W.Va. R. Prof. C. 5.6)	N/A	No	N/A	N/A	Yes	Yes, for cause	Yes	No
<b>WISCONSIN</b>	Yes	Wis. Stat. Ann. § 103.465	Lawyers (Wisconsin SCR 20:5.6)	N/A	Yes (if conditioned upon executing the agreement)	N/A	N/A	Yes	Unresolved	No	Unresolved
<b>WYOMING</b>	Yes	No	Lawyers (Wyo. R. Prof. C. 5.6)	N/A	No	N/A	N/A	Not yet decided	Probably	No	Unresolved