

The Year Ahead 2025: Non-Compete Conundrums

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For 2025, and perhaps beyond, the writing appears to be on the wall for true non-competes. Prudent employers looking down the road should make sure they are doing what they can to strengthen their other restrictive covenants and protection of confidential information and trade secrets.

Takeaways

- True non-compete agreements are continuing to fall out of favor and more robust state-level restrictions continue to rise.
- The trend of limiting the use of non-competes for healthcare professionals will continue.
- To manage through these continuing trends, employers should focus on drafting and training to stay agile in response to ongoing changes.
 - Be mindful of which employees to bind by true non-competes.
 - Focus on other restrictive covenants and the protection of confidential information and trade secrets.
 - Be cautious of relying on Delaware for choice of law.

The Push-Pull Continues

Agency Action: The FTC

A Republican majority at the FTC suggests there will be less activism in terms of rulemaking, with FTC enforcement actions likely concentrating on the most egregious violations becoming more of a focus.

Federal Legislation

Previous bipartisan bills, which were less controversial than the FTC's outright ban and had possible limitations on "easy targets" like salary thresholds and prior notice, could be resurrected.

State-Level Limitations

State legislatures will continue to enact limitations on the use of non-competes and other restrictive covenants: Louisiana, Maryland and Pennsylvania each passed laws going into effect in 2025 that restrict or limit the use of non-competes for certain types of healthcare professionals. While the governors of New York, Maine and Rhode Island vetoed passed laws that would ban non-competes, the legislatures may try again.

Delaware Courts

Trending away from its long-standing willingness to enforce restrictive covenants and focusing on the rule of reasonableness, the Delaware Supreme Court invalidated an overly broad non-compete agreement in *Sunder Energy LLC v. Jackson* (Dec. 2024). It declined to "blue pencil" the agreement.



The Year Ahead 2025: Countering the Trend Against True Non-Competes

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“All of this is to say that for 2025, and perhaps beyond, the writing appears to be on the wall as to true non-competes. They, whoever they are, are coming for employers who are aggressive in their choice of which employees are bound by true non-competes, the extent of the restrictions and the enforcement actions taken.”

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