

# The Year Ahead 2025: Non-Compete Conundrums

January 16, 2025

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

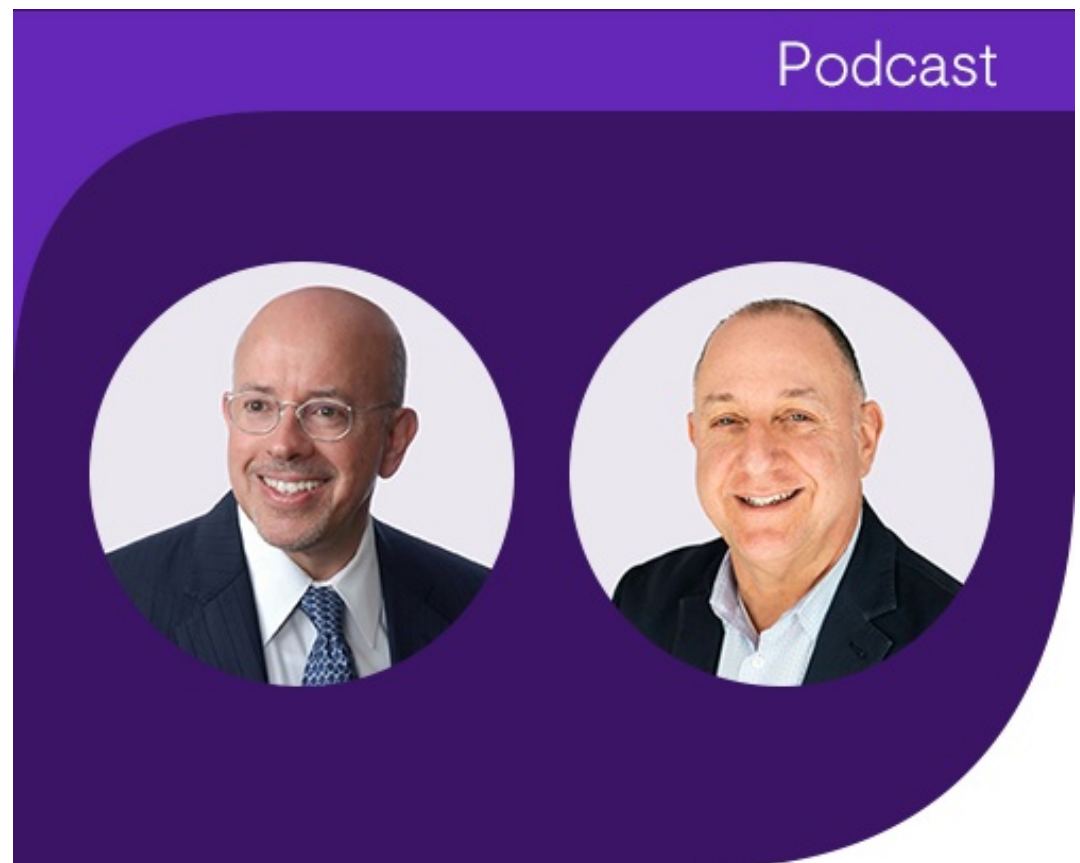
Previous bipartisan bills, which were less controversial than the FTC's outright ban and had possible limitations on "easy targets" like salary thresholds and prior notice, could be resurrected.

## 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**

Hosts: **Clifford R. Atlas** and **Erik J. Winton**, Principals and Restrictive Covenants, Trade Secrets and Unfair Competition Co-Leaders

“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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## Related resources



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### **Georgia High Court: Implicit Geographic Scope Sufficient for Valid Employee Non-Solicitation Covenant**



### **Battle Over/War Isn't: Employer Considerations Now That FTC Non-Compete Ban Is Set Aside**



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