

WEBINAR

National Strategies in Non-Compete Agreements



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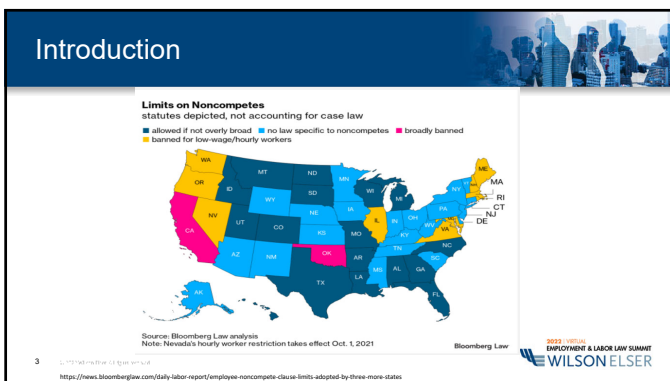
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Types of Agreements that Restrict Trade

- End result: limiting an individual's ability to make a living
- Covenants not to compete
- Non-solicitation
 - Employees
 - Customers/contacts
- Trade Secrets/Confidentiality

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Benefits of Non-competes

- Protecting a legitimate business interest
 - IP
 - Confidential resources
 - Customer relationships and goodwill
 - Proprietary information

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Limitations on Enforceability

- Varies by state law
- Legitimate business interests vary by state
- Other protectable interests may vary by state
 - Competition by wrongful means, but not ordinary competition
 - An employees' unique or extraordinary skills
 - Disintermediation (protection against cutting out the middleman)

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Choice of Law and Venue

- Federal law
 - President Biden's Executive Order on Promoting Competition in the American Economy (July 9, 2021)
 - "To address agreements that may unduly limit workers' ability to change jobs, the Chair of the FTC is encouraged to consider working with the rest of the Commission to exercise the FTC's statutory rulemaking authority under the Federal Trade Commission Act to curtail the unfair use of non-compete clauses and other clauses or agreements that may unfairly limit worker mobility."
- State law
 - Common law
 - Statutory law

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Key considerations

- Geographic scope
- Temporal scope
- Functional scope – Does it pass the Janitor's test?
- Must be narrowly tailored to protect a legitimate business interest
- Consideration
 - Upon hire
 - Continued employment

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Unusual State Law Provisions

- California
- North Dakota
- Washington, D.C.
- Low wage earners

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Differences by Industry

- Lawyers
- Medical professionals
 - TX, CO, CT, RI, FL and IN
- Technology
 - HI
- Financial – FINRA


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Departing Employees

- Exit interview – reminders
- Cease and Desist
- Evaluation violations
- Litigation


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Alternatives to non-competes

- Are there any alternatives?


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