

What We Know About Noncompetes, Confidentiality & Nondisparagement Provisions a Year Later

How to proceed in light of increasing limitations on restrictive covenants

In 2023, noncompete clauses in employee agreements came under heavy scrutiny not only by state legislatures, but by both the Federal Trade Commission and the National Labor Relations Board. In early 2023, the FTC announced that it was pursuing so-called “enforcement actions” against several companies for their use of noncompetes. Immediately after the announcement, the FTC issued a notice that it was considering a rule to ban virtually all noncompetes and other employee restrictions that could inhibit employee mobility. Soon thereafter, the NLRB issued the *McLaren Macomb* decision stating that the confidentiality and nondisparagement provisions included in the severance agreement infringed on employees’ rights, rendering the severance agreement unlawful. Following that decision, the NLRB General Counsel issued a memo stating that the use of noncompetes and potentially other restrictive covenants is an unfair labor practice. The NLRB then followed up with an unfair labor charge against a company using a noncompete and other restrictive covenants. Since then, California passed two laws purporting to apply California’s anti-restrictive covenant policy across the country, allowing employees to “flee” to California to sanitize themselves from their contractual obligations.

The FTC and NLRB General Counsel’s actions fundamentally alter the landscape for nondisclosure agreements, noncompetes, and other restrictive covenants that have been developed and refined for over 200 years. And, California potentially upends the entire system with its expansive rejection of other states’ restrictive covenant laws. Learn what happened, how companies have responded, and how to move forward in light of the increasing limitations on restrictive covenants.

Agenda

- What Actions Have the FTC and NLRB Taken Since Their Respective Proposed Rulemaking and General Counsel Memorandum in 2023?
- Changes and Impacts from State Legislative Changes Across the Country
- Continuing Risks of Using Restrictive Covenants in Employee Agreements, and How to Safely Implement Them
- Updated Best Practices for Using Agreements to Protect Trade Secrets and Confidential Information
- “Ask the Experts” Q&A Session

Faculty

Russell Beck, Esq., *Beck Reed Riden LLP, Boston*, Chair; Nicole Corvini Daly, Esq., *Beck Reed Riden LLP, Boston*; Carla A. Reeves, Esq., *Goulston & Storrs, PC, Boston*; Katherine G. Rigby, Esq., *Epstein Becker & Green, PC, Boston*; David S. Rubin, Esq., *Nutter McClennen & Fish LLP, Boston*; Patricia A. Washienko, Esq., *Washienko Law Group LLC, Boston*



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Tuesday, June 4, 2024
2:00 pm–5:00 pm
Program # 2240177WBC

REBROADCAST

Wednesday, June 19, 2024
9:30 am–12:30 pm
Program # 2240177RB1

REBROADCAST

Thursday, June 27, 2024
12:00 pm–3:00 pm
Program # 2240177RB2

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View after Thursday, June 27, 2024
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