

The Workforce Mobility Act

What is a Non-Compete?

Non-compete agreements (or “non-competes”) are employment provisions that prohibit individuals from joining a competing firm or starting a new venture in the same field after leaving their employer, within geographic and time boundaries. They have become pervasive throughout the labor market, covering an estimated *30 million* U.S. employees, affecting highly skilled and low-wage workers alike.

Correlated with the increased use of non-competes, the American workforce has experienced significantly reduced job mobility, tepid wage growth, and declining rates of entrepreneurship in recent decades. Yet, as the need for a more dynamic labor market rises, tools like non-compete agreements – aimed at protecting incumbent businesses from competition – increasingly end up stunting worker mobility and harming the broader economy in the process.

Non-competes are often secretive in nature, and 93% of employees do not negotiate the terms before signing. In fact, 30-40% of workers are asked to sign a non-compete after they have accepted employment. Some non-competes can even be enforced in situations where the employee has been laid off. These transparency issues have led to broader concerns about the effects of non-competes on the workforce and the economy as a whole.

How Non-Competes Hurt Workers and the Economy:

A growing body of research (Evan Starr, a professor at the University of Maryland is the preeminent researcher on non-competes) suggests that prohibiting the use of non-competes would improve worker mobility, boost wages, increase entrepreneurship, and spur innovation – *all without spending taxpayer dollars or creating a new government program.*

- As their name implies, non-competes inherently **reduce competitive market forces** by narrowing the available employment options for workers, undermining their basic right to compete for a good job.
- For employers, non-competes **limit the available supply of qualified workers** to fill talent needs – even when the employer can offer better salary, benefits, and working conditions.
- Non-compete agreements are shown to **suppress wages** and keep workers in their jobs for longer – without commensurate increases in pay or job satisfaction.
- Research indicates that non-competes **hinder entrepreneurship**; states that enforce non-competes see fewer startups, and firms that do start tend to have fewer employees at launch and are more likely to fail.
- States have taken dramatically different approaches to enforcing non-competes, creating **regulatory uncertainty** that discourages workers from taking a better job or starting their own company.

Allowing employers to hold veto power over an employee’s right to choose where they work is the antithesis to the American dream. Non-competes rob workers of their autonomy to decide how to apply their talents in the workforce. **Employers have numerous other tools at their disposal to protect their legitimate interests**, including Trade Secrets statutes, from intellectual property protections to non-disclosure and non-solicitation agreements.

The most famous example of abusive non-competes, although there have been many, would be Jimmy John's from several years ago. In this instance, an employee making minimum wage tried to leave his position and join another Jimmy John's franchise. Because the second Jimmy John's franchise was owned by a different franchisor and the employee signed a non-compete, the employee was lawfully restricted from leaving.

Following several years of research, the Federal Trade Commission (FTC) has recognized the harmful effects of non-competes and recently proposed a new rule that would ban employers from imposing these contracts on employees.

The Workforce Mobility Act includes provisions that would:

- Ban the use of non-compete agreements for workers to include only necessary instances of a dissolution of a partnership or the sale of a business. The only instance where non-competes would be allowed would be when a business is sold or a partnership dissolved. The resulting parties from such a dissolution could bind each other, or the company's senior executives, to non-competes.
- Enforcement of this ban on non-competes is the responsibility of the Federal Trade Commission and the Department of Labor, as well as through a private right of action.
- Employers would be required to make their employees aware of the ban on non-competes, as studies have found that **non-competes are often used even when they are illegal or unenforceable**. The Department of Labor would also be given the authority to make the public aware of the limitation.
- The Federal Trade Commission and the Department of Labor shall submit a report to Congress on any enforcement actions taken by those agencies.