CLIENT ALERTS & INSIGHTS

2025 Trade Secret and Restrictive Covenant Year in Review

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Key Takeaways

- In 2025, states continued to scrutinize the enforceability of noncompete agreements-particularly for healthcare and lower-wage workers-while trade secret litigation increased with more filings, higher damages awards and greater scrutiny of how trade secrets are defined and protected.
- Employers face increased risk from overbroad or outdated restrictive covenants and from trade secret claims that are not precisely defined or well documented. Similarly, individuals who are found liable for trade secret theft face the risk of significant jury awards.
- Businesses should review restrictive covenant and confidentiality agreements for state-specific compliance, ensure trade secrets are clearly identified and protected (including AI-related assets) and reassess enforcement strategies in light of evolving judicial and legislative trends.

2025 continued to be-and some could argue accelerated-a multi-year trend of heightened restrictive covenant activity in the courts and state legislatures. And even though the FTC noncompete ban is dead, federal agencies still made their presence known in the noncompete space, as did juries who expressed their displeasure with defendants who (allegedly) stole and used their competitor's trade secrets.

Below is a summary of the key 2025 developments in (1) restrictive covenant legislation-both enacted and proposed; (2) federal and state trade secret litigation; (3) noncompete and related restrictive covenant case law, including healthcare-specific rules; and (4) important Delaware decisions that are shaping how sophisticated commercial parties should draft and enforce restrictive covenants. (Spoiler alert: Delaware may not be as friendly as you think it is.)

2025 Restrictive covenant legislation rarely made it to the Governor's Desk but, when it did, certain patterns emerged (and will likely be seen in future legislation.)

The combination of (a) continued job mobility; (b) rapid AI-driven product cycles; and (c) strong federal and state antipathy toward restraints on worker mobility made 2025 a pivotal year for restrictive covenant law. Multiple states drafted, and several enacted, statutes narrowing or banning noncompete agreements, especially for low- and middle-income workers, and for physicians and other healthcare providers. In doing so, the legislative drafters borrowed heavily from California, Colorado, Illinois, Minnesota and Washington.

Specifically, approximately 32 states introduced bills aimed at limiting or prohibiting restrictive covenants. These proposals spanned a wide range, from complete bans on noncompetes (e.g., Michigan and Washington - neither passed) to income-based thresholds, healthcare-specific restrictions and procedural safeguards like mandatory notice periods. Of these introductions, however, only the 12 states below actually enacted new or significantly amended restrictive covenant statutes in 2025:

- **Arkansas** (prohibits physician noncompetes);
- **Colorado** (eliminates noncompetes for healthcare workers);
- **Indiana** (further limits enforceability of noncompetes on physicians);
- **Louisiana** (voids noncompetes for veterans/first responders and construction workers);
- **Maine** (caps physician noncompetes at 3-5 years);
- **Maryland** (bans noncompetes for low-wage healthcare providers);
- **Montana** (expands noncompete ban that covers certain physicians and healthcare providers);
- **Oregon** (voids certain medical noncompetes);
- **Texas** (significant changes to enforceability of physician noncompetes);
- **Utah** (prohibits healthcare services platforms from requiring healthcare workers to enter into noncompetes);
- **Virginia** (expanded low-wage noncompete ban);
- **Wyoming** (voided most new noncompetes.)

An outlier is **Florida**, which strengthened its noncompete statute by, among other things, allowing noncompetes for "covered employees" (typically higher earners) of up to four years, removing the prior two-year enforceability presumption and shifting the burden of proof to the employee when challenging the enforceability of the noncompete.

In taking a step back and looking at all the proposed and enacted restrictive covenant legislation, a pattern starts to emerge, with legislatures tending to focus restrictive covenant legislation on income thresholds and carveouts for "lower-level employees," duration caps, advanced notice requirements,

civil penalties and fee-shifting provisions for overbroad restrictive covenants. We can expect this focus to continue in 2026.

On the federal level, and as mentioned above, the FTC's proposed ban on noncompetes is dead. Yet, this does not mean that the federal government has decided to ignore noncompetes. Instead, the FTC (and other government agencies) continues to pursue overbroad restrictive covenants on a case-by-case (or more specifically, company-by-company) basis. It is important to note, however, that no government agency (federal or state) has ever attempted to invalidate a noncompete that would be enforceable under state law.

2025 Jury Verdicts Hit New Heights

Data from 2025 confirmed that trade secret cases remain a core tool for protecting competitive advantage. Indeed, a review of federal filings for the first half of 2025 showed a 15% increase in federal trade secret cases compared to the first half of 2024, continuing an upward trajectory since enactment of the Defend Trade Secrets Act ("DTSA") in 2016. Included in this increase was an approximately 80% jump in "artificial intelligence" trade secret cases.

An increase in damages awards was also seen in 2025. Some of the more eye-popping damages awards include:

- Motorola receiving an additional $70 million (on top of a $100 million plus award) from competitor Hytera after the court found Hytera in contempt for violating a 2020 royalty order arising out of a trade secret verdict. Perhaps more importantly, the Seventh Circuit held that the DTSA permits damages for misappropriation-related sales outside the United States when an act in furtherance of the misappropriation occurred in the United States.

- Although technically in 2024 (December), a Massachusetts federal jury returned a $452 million verdict against a Korean medical device maker for misappropriating trade secrets.
- An Arkansas federal jury awarded Zest Labs nearly $223 million after concluding that Walmart stole the startup's trade secrets for a product designed to keep groceries fresh longer. In addition to the large award, the jury verdict is notable because the verdict was rendered in Walmart's backyard.

Not all trade secret news, however, was bad for defendants. In December, the Federal Circuit affirmed an Ohio federal judge's decision to erase a $64 million jury verdict against Goodyear, agreeing that a Czech self-inflating tire company's suit had alleged misappropriation of trade secrets that were insufficiently defined, not secret, or not used by Goodyear.

Lastly, an important ruling out of the Ninth Circuit in August reversed a California federal court's decision to strike several trade secret claims that were not identified with "reasonable particularity" at the beginning of the case. In doing so, the Ninth Circuit determined that identifying a trade secret with sufficient detail is a factual matter reserved for trial or summary judgment instead of being resolved before discovery. The opinion is significant because it clarifies that the federal Defend Trade Secrets Act, unlike the California Trade Secrets Act, does not require plaintiffs to identify trade

secrets with specificity at the early stages of a case. Although the Ninth Circuit ruling is a clear win for trade secret plaintiffs, the *Goodyear* decision is a reminder that plaintiffs will eventually need to do identify their trade secrets with specificity or face a not-so-friendly result at the end of the case.

Delaware - Friend, Foe or Something in Between

Delaware will always occupy an outsized role in restrictive covenant jurisprudence because of its centrality to corporate law and sophisticated Court of Chancery. Following a trend we started noticing in 2022, Delaware courts are not restrictive covenant “rubber stamps” and are more than willing to strike down overly broad restrictions, including overly broad restrictions in sale-of-business and high-level employment agreements. In fact, Delaware’s restrictive covenant landscape may now be defined by a deepening divide between "traditional" noncompetes and "forfeiture-for-competition" provisions. Put another way, while the Delaware Supreme Court reaffirmed in 2025 the "Employee Choice Doctrine,” giving businesses broad latitude to claw back equity or bonuses from former employees who compete, some Vice Chancellors have grown more hostile toward injunctive noncompetes. Consequently, the "Delaware advantage" is no longer a guarantee of restrictive covenant enforcement, and companies should take note that:

- "Judicial blue-penciling" of overbroad restrictive covenants is no longer the norm. As noted in Cleveland Integrity Servs. v. Byers, Chancellors are permitted (encouraged?) to strike down entire agreements if any single part is deemed overbroad;

- Noncompetes tied to the sale of a business must be tailored specifically to the acquired business or the employee’s actual duties. In Kodiak Building Partners v. Adams and Payscale Inc. v. Norman, the court invalidated a nationwide ban because it was tied to the parent company’s entire portfolio rather than the specific line of business the employee worked in;
- Injunctive relief may not be available if a company claws back the consideration. In North American Fire Ultimate Holdings v. Doorly, the Court ruled that if an employee's equity is forfeited because they competed, the restrictive covenant may become unenforceable for a lack of remaining consideration.

Outside of Delaware, common fights over restrictive covenants (outside of whether the restrictions are “reasonable”) in 2025 included the application of choice-of-law clauses that conflicted with a statue or strong public policy (e.g., California, Minnesota, Oklahoma and increasingly Colorado) against enforcing such restraints, strict no-blue-pencil jurisdictions versus permissive blue penciling, and continued skepticism of pure “inevitable disclosure” arguments.

Conclusion

Benesch's Trade Secret, Restrictive Covenants and Unfair Competition Practice Group will continue to monitor important activities in, and changes to, the trade secret and restrictive covenant space. The Group will provide periodic updates regarding new statutes, government actions and case opinions that may impact the ability to enforce restrictive covenants or protect trade secrets. The Group is also offering a flat fee review of restrictive covenant agreements to assess whether the agreements comply with the recent changes to restrictive covenant law.

If you would like to hear more about these offerings, please contact Scott Humphrey at 312.624.6420 or shumphrey@beneschlaw.com.