The Work Week

Bassford Remele Employment Practice Group

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Welcome to another edition of *The Work Week with Bassford Remele.* Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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Protections for Employers in a Post-Noncompete World

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For decades, noncompete agreements were a standard feature of employment contracts, used by employers of all sizes across industries to prevent employees from leaving for a competitor and taking valuable information with them. That landscape has changed dramatically. Both federal regulators and state legislatures have acted to limit or otherwise eliminate noncompetes, forcing employers to reconsider how they protect their confidential business information and customer goodwill.

Fortunately, employers are not left without recourse. Even without noncompetes, companies can still safeguard their proprietary information through a combination of statutory protections, contract drafting, and sound business practices.

Alternatives to Noncompetes

One of the most effective tools for employers remains trade secret law. Both the Uniform Trade Secrets Act, adopted in some form by nearly every state, and the federal Defend Trade Secrets Act provide remedies when an employee misappropriates confidential business information. These laws offer strong protection without the broad restraints on mobility that noncompetes impose.

Employers also have a range of contractual and policy-based tools that serve as practical substitutes for noncompetes. Confidentiality agreements or nondisclosure agreements restrict employees from disclosing sensitive information, while non solicitation clauses limit departing employees from contacting former clients or colleagues. Trade secret policies, when

implemented consistently across the organization, help establish clear expectations for how confidential information is defined, used, and safeguarded. These tools, when properly drafted and enforced, can be highly effective in protecting legitimate business interests without unduly restricting employee mobility.

Training repayment agreements and liquidated damages provisions, so long as they are reasonable and tied to actual costs, can further discourage misuse of resources or premature departures. These contractual mechanisms work best when combined with proactive internal measures such as identifying what information qualifies as confidential, educating employees on their responsibilities, and applying policies uniformly. In today's legal climate, a comprehensive approach to managing proprietary data is just as important as the agreements themselves.

National Developments

At the federal level, the Federal Trade Commission announced a sweeping ban on most noncompetes in April 2024, scheduled to take effect that September. A federal district court in Texas, however, enjoined the rule before its effective date, and the agency has since paused its appeal. As a result, noncompetes remain a matter of state law for now, although the FTC continues to scrutinize them through its antitrust and unfair labor practice authority.

At the state level, restrictions are accelerating. California, North Dakota, and Oklahoma have long prohibited noncompetes outright, and Minnesota joined their ranks in 2023 with a broad statutory ban. Other states, such as Colorado, Illinois, Washington, and Virginia, have adopted income-based restrictions, prohibiting noncompetes for lower-wage workers while allowing them for certain higher earners. In 2025, states including Maryland, Pennsylvania, and Louisiana added further limits, particularly in the health care sector. Legislatures in New York, North Carolina, and Arizona are also considering additional restrictions, with some proposals amounting to near-total bans.

Specifically in Minnesota, the state enacted legislation voiding nearly all post-employment noncompetes after July 1, 2023, regardless of an employee's income or position. The only exceptions apply in the context of the sale or dissolution of a business. The law also prevents employers from using choice-of-law and forum selection provisions to avoid Minnesota's protections. Efforts to introduce carve-outs for certain industries were defeated in 2025.

The Path Forward for Employers

Reliance on noncompetes is increasingly risky and, in many jurisdictions, simply unlawful. Protecting confidential information now requires a different approach. Employers should lean on targeted agreements such as NDAs and non-solicitation clauses, ensure compliance with trade secret statutes, and implement practical safeguards that reinforce a culture of confidentiality.

Although the legal framework is shifting, employers can still protect their most valuable information without restricting employee mobility. The key is to use the tools that remain available in a thoughtful and enforceable way. Bassford Remele's Employment group continues to monitor changes in laws with respect to noncompetes on a local and national basis. Please reach out with any questions or if you need assistance!

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