

The Workforce Mobility Act

What is a Non-Compete?

Non-compete clauses (or “non-competes”) are provisions of employment contracts 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. Non-competes prevent workers from moving to better jobs and thus deny them the promise of the U.S. economy.

Reduced job mobility, tepid wage growth, and declining rates of entrepreneurship have all been features of the U.S. labor market in recent decades, and they all correlate with the rising use of noncompete clauses. Proponents claim that non-competes help firms protect themselves and their trade secrets, but in reality, incumbent businesses use non-competes to insulate themselves from the very competition that powers the economy forward. Non-competes stunt worker mobility and harm the broader economy.

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 large and growing body of research consistently 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.
- 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-competes **suppress wages** and keep workers in their jobs for longer – without commensurate increases in pay or job satisfaction.
- 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.
- Non-competes **undermine innovation**; states that strictly enforce non-competes generate fewer and less influential patents.
- Non-competes **fail to meaningfully protect trade secrets**; employers cite trade secrets and other sensitive information as justification for using non-competes. But economic research strongly suggests that employers are better able to safeguard trade secrets in states that ban non-competes.

- 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 intellectual property and trade secret protections as well as non-disclosure and non-solicitation agreements.

The Workforce Mobility Act includes provisions that would:

- Ban the use of non-compete clauses for workers, except in necessary instances when a business is sold or a partnership dissolves.
- Grant enforcement responsibility to the Federal Trade Commission and the Department of Labor, as well as allow private right of action.
- Require employers 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.
- Require the Federal Trade Commission and the Department of Labor to submit a report to Congress on any enforcement actions taken by those agencies.