



Non-Compete Agreements in Employment Contracts

The Insights Association opposes the use of noncompete agreements in employment contracts for all but the most senior employees, unless the employees receive compensation or severance commensurate with the time frame the employees are restricted.

The use of nondisclosure agreements or non-solicitation agreements should not be impeded. Asking a departing employee to temporarily refrain from initiating contact with her/his clients to allow the employer adequate time to transfer client service, is generally reasonable. Similarly, ensuring intellectual and confidential information are protected is a fair and reasonable requirement.

However, what is the rightful place of the non-compete agreement? Is it fair to both employers and employees? Are such agreements ethical? Will they stand the test of time in the courts and law?

In challenging times, a bigger question arises: If someone gets laid-off, can a non-compete provision be enforced by a former employer? That was the issue facing the insights industry early in the COVID-19 crisis: As we were gripped by economic crisis and many staff were being laid off, would noncompete agreements prevent them from being able to find work elsewhere?

The Insights Association [took the position](#) that noncompete agreements are often unenforceable and, particularly during a crisis, should not be enforced for staff involuntarily separated from their companies/organizations without full compensation. The Insights Association urged our members that they would be better off devoting their “time and resources” to “keeping employees satisfied and motivated to fulfill their potential within this growing industry” than to enforce uncompensated noncompete agreements.

The insights industry needs our workforce working, not on the sidelines or spending their resources to fight non-compete agreements in court, even with the COVID-19 crisis in the rear-view mirror.

Research suggests that the prevalence of noncompete agreements limits the mobility of American workers, upward and otherwise, and impedes competition between companies/organizations.

As the legal regime for noncompete agreements is full of conflicts at the state level, the Insights Association urges a federal approach that sets fair standards on the use and enforceability of noncompete agreements, in the best interests of both employers and employees. We are seeing movement in that direction:

- President Joe Biden, recognizing the negative impact, asked the FTC to exercise its rulemaking authority “to curtail the unfair use of non-compete clauses” in a July 9, 2021 [Executive Order](#).
- In Congress, Sens. Chris Murphy (D-CT) and Todd Young (R-IN), and Rep. Scott Peters (D-CA-52) introduced the Workforce Mobility Act (S.483, H.R.1367) and Sen. Marco Rubio (R-FL) introduced the Freedom to Compete Act (S. 2375), bills that would restrict most uses of noncompete agreements.

At this time of labor market tumult, when there are millions more job openings than people seeking work, we can help make sure that such workers are not unfairly locked out of the labor market, unable to earn a living in their line of work and support themselves and their loved ones, while supporting competition across American business.

P R O T E C T ◆ C O N N E C T ◆ I N F O R M ◆ P R O M O T E

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