

## Why We Signed a Joint Letter Urging Caution in Non-Compete Regulation

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Earlier this month, President Joseph Biden [issued an Executive Order](#) encouraging the Federal Trade Commission (FTC) to “curtail the unfair use of non-compete clauses and other clauses or agreements that may unfairly limit worker mobility.”

We joined more than 50 lawyers and paralegals around the country – all of us experienced restrictive covenant practitioners – in signing a joint [letter](#) urging the White House and the FTC to exercise caution in regulating non-compete agreements.

Drafted by our friend Russell Beck of Beck Reed Riden LLP, with input from us and some of the other signatories, the letter describes the long-recognized benefits of reasonable non-compete agreements and other restrictive covenants, particularly protecting valuable trade secrets from misappropriation. Indeed, non-compete agreements have been enforced as valid and reasonable in most states for hundreds of years. The letter also dispels common misconceptions about non-compete agreements, including the idea that all non-competes are necessarily abusive to employees.

While taking no position on whether the FTC legally can regulate this area of law, we suggest the FTC act judiciously, if at all. For example, rather than issuing a complete ban, the letter proposes the FTC consider prohibiting non-competes for low-wage workers only and require that employers give advance notice of non-compete provisions to employees before requiring them to agree. We believe that more modest regulations can be designed to balance competing interests of employers and employees, especially in light of the state-specific legislation, common law history, and the very capable job courts have done to enforce what is reasonable under the facts of the cases presented.

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