
The Uniform Restrictive Employment Agreement Act

**A COMPREHENSIVE APPROACH TO REFORM THAT HELPS WORKERS
AND ENTREPRENEURS WHILE PROMOTING COMPETITION**



Commissioner Rich Cassidy
and
Professor Stewart Schwab



BACKGROUND & INTRODUCTION

Rich Cassidy, Chair
Uniform Restrictive Employment
Agreement Act Drafting
Committee

Core Features of Act

- **Broad Scope:**
 - Noncompetes and all other restrictive agreements
 - Employees and other workers
- **Low-Wage Workers:**
 - Workers paid less than state's annual mean wage not shackled by noncompetes
- **Notice:**
 - Advance notice and other procedures for enforceable restrictive agreements
- **Enforcement:**
 - Statutory damages
 - Suit by state departments of labor and private right of action
- **Choice of Law and Venue:**
 - Law of place of primary work
 - Venue of place of work or of residence at dispute

Supporters & Stakeholders

- Employers want:
 - To keep current workers from leaving, and
 - To hire experienced workers from other firms.
- All parties benefit from
 - Balanced approach;
 - Clarity of law; and
 - Predictability across states.



KEY PROVISIONS OF THE ACT

Stewart Schwab, Reporter
Uniform Restrictive Employment
Agreement Act Drafting
Committee

Professor, Cornell Law School

META CHOICES

- Draft a Uniform Act?
 - Cacophony of States, California as outlier, Usefulness of Common Law
- Positive or Negative Form?
 - Valid if / Invalid unless
 - Safe harbors? / Clear prohibitions?
- Unenforceable or also Prohibited?
 - Prohibitions require penalties

BIG CHOICES

- Scope?
 - Noncompetes, or all Post-Employment Restrictive Agreements?
 - Employees, or all Workers?
- Garden Leave?
- Red or Blue Pencil Judicial Reformation?

WEIGHT OF SCALIA ON MY SHOULDER



- IT'S THE TEXT
- Underlying purpose doesn't matter
- Goals don't matter
- Comments don't matter

DEFINITION OF RESTRICTIVE EMPLOYMENT AGREEMENT § 2(11)

- Any agreement that
 - Prohibits, limits, or sets a condition on
 - Working other than for employer
 - After work relationship ends
- Act does not regulate anything during work relationship with first employer

NOTICE REQUIREMENTS § 4

Restrictive Employment Agreement prohibited and unenforceable unless:

- Worker has 14 days notice before accepting or starting work
- Signed record
- Specific notice:
 - Agreement clearly specifies information, work activity, or competition that is restricted
- General notice:
 - Employer gives form notice of Act's requirements
 - As prescribed by State Department of Labor

LOW-WAGE WORKERS § 5

- Restrictive agreement prohibited and unenforceable for
 - Any worker paid less than state average mean wage
 - Currently about \$56,000
 - Ranges from \$41,000 (Miss.) - \$70,000 (Mass.)
- Rationale: These workers
 - Rarely have trade secrets or strong customer relationships
 - Often lack mobility
- Exception to low-wage prohibition:
 - Confidentiality agreements
 - Training-repayment agreements

NONCOMPETE AGREEMENT § 8

Prohibited and unenforceable unless agreement:

- Protects a legitimate interest
 - Sale or creation of business where worker is substantial owner
 - Trade secret
 - Ongoing customer relationship
- Is narrowly tailored
 - in duration, geography, and scope of competition; and
- Restricted period no longer than
 - 1 year for most noncompetes
 - 5 years when protecting sale or creation of business

ENFORCEMENT & REMEDY § 16

- Alternatives for court modification of overbroad agreement
 - Alternative A, Red pencil: No modification
 - Alternative B, Reformation or Purple pencil: Court
 - may not modify agreement restricting beyond period imposed by Act
 - may otherwise modify agreement entered in reasonable good faith
- Attorney's fees
 - to private party successfully challenging/defending against enforceability
- Declaratory judgment action
 - Allowed for worker or subsequent employer claiming nonenforceability
- Statutory damages of [\$5,000] for agreement that employer knows or reasonably should know is prohibited
 - Enforced by State Attorney General or by worker private action

CHOICE OF LAW AND VENUE § 17

- Choice of law/forum provision prohibited and unenforceable unless:
 - Applicable law--jurisdiction where worker primarily works
 - Applicable Forum--jurisdiction where worker
 - primarily works, or
 - Currently resides
- Rationale:
 - Promotes uniformity
 - Parties cannot write around Act
 - Worker has realistic opportunity to challenge agreement that violates Act



ADDITIONAL DETAIL

SCOPE OF ACT § 3

Act Covers/Supersedes

- Restrictive employment agreement
- Common law of restrictive employment agreement

Act does NOT Cover/Supersede

- Other parts of employment agreement
- General principles of law and equity consistent with Act
- Identified state statutes consistent with Act
- Agreement solely to transfer, perfect, or enforce patent, copyright, trade secret, or similar right
- Noncompetition obligation arising solely from ownership obligation
- Forfeiting compensation accrued before work ends (e.g., vacation/retirement)

WORKER/EMPLOYER DEFINITIONS §§ 2(3),(19),(20)

- Employer: Person that hires or contracts with worker
- Work: Providing a service
- Worker: Individual who works for an employer
 - Includes Employee, Independent Contractor, extern, intern, volunteer, apprentice, sole proprietor, individual providing service through business or nonprofit entity or association
 - Does not include member of board of directors, investor, or vendor of goods

CONFIDENTIALITY AGREEMENT § 9

- Prohibited and unenforceable unless worker may use or disclose information that:
 - Arises from worker's general training, knowledge, skill, or experience;
 - Is readily ascertainable to the relevant public; or
 - Is irrelevant to the employer's business
- No time limit
 - Typical confidentiality agreement lasts as long as trade secret exists

NO-BUSINESS AGREEMENT § 10

Prohibited and unenforceable unless agreement:

- Applies only to prospective or ongoing customer of employer
 - With which worker had worked personally; and
- Lasts no longer than 6 months after work relationship ends

NONSOLICITATION AGREEMENT § 11

Prohibited and unenforceable unless agreement:

- Applies only to prospective or ongoing customer of employer
 - With which worker had worked personally; and
- Lasts no longer than 1 year after work relationship ends

NO-RECRUIT AGREEMENT § 12

Prohibited and unenforceable unless agreement:

- Applies only to another worker currently working for employer
 - With whom worker had worked personally; and
- Lasts no longer than 6 months after work relationship ends

PAYMENT-FOR-COMPETITION AGREEMENT § 13

Prohibited and unenforceable unless agreement:

- Imposes financial consequence no greater than actual competitive harm to employer; and
- Lasts not longer than 1 year after work relationship ends

TRAINING-REPAYMENT AGREEMENT § 14

Prohibited and unenforceable unless agreement:

- Requires repayment only for cost of special training
- Lasts not longer than 2 years after special training completed; and
- Prorates repayment for work done in post-training period



Interested in enacting the **Uniform Restrictive Employment Agreement Act in your state?**

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Visit

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