



LEGISLATIVE  
RESEARCH &  
GENERAL COUNSEL

# Noncompete Agreements

Committee Staff

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*in Utah*

# What is a noncompete agreement?

**Post-employment restrictive covenant**

**Covenant not to compete**

**Noncompete agreement**

The employee agrees to not compete with the employer in providing products, processes, or services that are similar to the employer's products, processes, or services.



# Policy Development

Since 2016, three bills have passed to establish policy.



# Policy Today

## General Policy

Noncompete agreement valid if:

Entered into on or after May 10, 2016, may not be more than one year from the day on which the employee is no longer employed by the employer.

## Broadcasting Employee Policy

Noncompete agreement valid if:

1. Exempt broadcasting employee
2. NCA is part of written employment contract of reasonable duration, based on industry standards, position, experience, geography, AND
3. Employee is terminated for cause/breaches contract

Enforceable the earlier of one year or the day the original term of employment in the contract ends.



# State-by-State Survey

## Banned 3

CA, ND, OK

## Salary Threshold 10

CO, DC, IL, ME, MD, NH, OR, RI, VA, WA

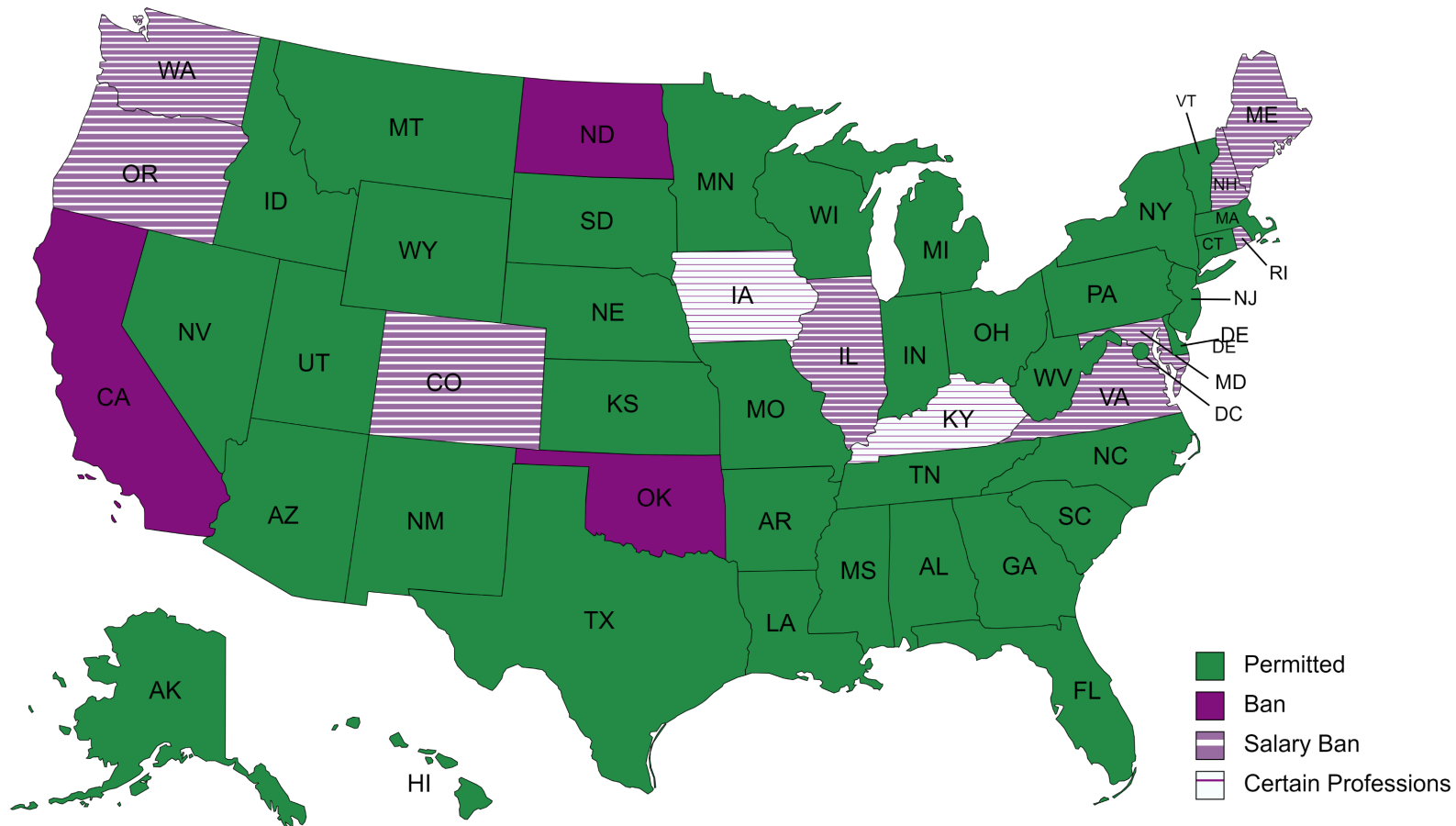
## Certain Professions 2

IA, KY

## Trending

2022: five states and DC effected legislation designed to limit use of NCA

18 states have proposed or pending legislation.



# Trending Policies

- Limiting use to the protection of trade secrets
- Minimum salary thresholds
- Term limits on post-employment restrictions
- Employee notice and “time to consider” requirements
- Limiting legal recourse against employees



# Restrictive Covenants

## Noncompete

- Agreement not to work for a competitor



## Non-disclosure (aka "NDA" or "confidentiality")

- Agreement not to disclose confidential information received during employment



## Non-solicitation

- Agreement not to solicit employer's customers



# Utah Courts

Supported by  
consideration

Negotiated in  
good faith

Necessary to  
protect the  
goodwill of the  
business

Reasonable in  
geographic area





# Utah Courts

**Limited to services that are:**



Special



Unique



Extraordinary



# Utah Courts



Enforce noncompetes if narrowly tailored “to protect the legitimate interests of the employer”



## Protectable interests include:

Trade secrets

Goodwill of the business

Extraordinary investment in the education or training of an employee



# FTC Proposed Rule

**Prohibit**

- Noncompete clauses

**Require**

- Rescind existing noncompete clause
- Actively inform employees noncompetes not in effect

