DOW JONES RISK JOURNAL

DECEMBER 8, 2025

# Top Five Developments in 2025 Restrictive Covenant and Trade Secrets Law

This past year was a momentous one for restrictive covenant and trade secret law, pointing to the heightened need for companies to strategize on how best to protect their trade secrets and prevent unfair competition

By Steven J. Pearlman, Jonathan Gartner and Jake Lee | Contributors

The year 2025 was pivotal in restrictive covenant and trade secret law, as regulators, legislatures and courts changed the landscape in significant ways. With federal agencies taking a step back from a one-size-fits-all ban on noncompete provisions, states have continued to fill the gap with a patchwork of laws—with some favorable to companies and others not.

Meanwhile, we saw annihilating jury verdicts, which underscore the need for companies to take measures calculated to protect trade secrets—which in many cases are their most important assets.

Here we capture the most noteworthy developments of 2025.

**1. States continue to pass restrictive covenant legislation, with Florida now allowing uniquely long noncompete and garden leave periods**

With major financial firms continuing to invest in and relocate to Florida, the state has strengthened its business-friendly reputation through Florida's Contracts Honoring Opportunity, Investment, Confidentiality and Economic Growth Act.

Effective July 4, 2025, the CHOICE Act presumes enforceability of covered noncompete and garden leave agreements for higher-earning employees, covering those who earn, or are reasonably expected to earn, more than twice the average annual wage of the Florida county where their employer has its principal place of business or, for out of state employers, the county in Florida where the employee resides. The qualifying salary threshold is expected to range from about $80,000 to $150,000 per year, dependent on the county.

Noncompete agreements covered under the CHOICE Act may last up to four years within a defined geography tied to similar services or likely use of confidential information or customer relationships. Covered garden leave can require up to four years' notice before resignation, with continued salary and benefits, and day-for-day offset against any noncompete to cap total restrictions at four years.

Employers must provide prospective employees with at least seven days' notice of the restrictions before the expiration of an offer of employment, advise the employee of their right to seek counsel, and have the employee acknowledge that they will receive confidential information or customer relationships. The statute also favors preliminary injunctions and allows fee-shifting to prevailing employers, while permitting compensation reduction for "gross misconduct" during garden leave.

2025 also saw another outlier, with Kansas enacting a law making certain non-solicitation provisions—of two years for employees, and four years for business owners—presumptively enforceable. The Kansas law also requires courts to modify overbroad non-solicitation provisions so they may be enforced to the maximum extent permitted by law.

Yet other states continue to disfavor restrictive covenants. For example, effective July 1, 2025, Wyoming prospectively banned most noncompete agreements, with exceptions for agreements with "executive and management personnel" and "professional staff to executive and management personnel."

**2. Circuit split emerges on requirements for trade secret identification in pleadings**

This year, federal appellate courts diverged on when and how plaintiffs must identify the alleged trade secrets at issue under the Defend Trade Secrets Act. In Sysco Machinery v. DCS USA, the Fourth Circuit affirmed dismissal of a complaint that failed to identify purported trade secrets with "sufficient particularity." In contrast, in Quintara Biosciences v. Ruifeng Biztech, the Ninth Circuit held that the DTSA does not impose a pre-discovery "reasonable particularity" requirement.

These differing standards have real consequences for companies who, at the time an initial complaint is filed, are still investigating the scope of potential misappropriation, and others who need more granularity to defend against claims.

**3. Massive jury verdicts in federal trade secrets cases**

Juries in federal courts issued a series of eye-popping trade secret verdicts across industries. For example, in Sonrai Systems v. Romano, a jury in the U.S. District Court for the Northern District of Illinois awarded nearly $59 million in compensatory and punitive damages for misappropriation tied to waste-hauling technology. And, in Zunum Aero v. Boeing (9th Cir.), the court reinstated a $72 million verdict, reversing a district court order granting a new trial and reaffirming that the company misappropriated trade secrets related to hybrid-electric aircraft.

These alarming verdicts demonstrate that federal judges and juries are increasingly open to large damage awards for misappropriation of trade secrets.

**4. Equally massive state jury verdicts for trade secret cases**

In Propel Fuels v. Phillips 66, a California Superior Court entered roughly $800 million in total relief for trade secret misappropriation arising from failed acquisition talks. The jury first awarded $604.9 million in unjust enrichment damages under the California Uniform Trade Secrets Act, and the court added $195 million in exemplary damages.

The court emphasized overlapping roles in due diligence and competitive decision-making, purportedly misleading assurances during negotiations, and incentive structures tied to the transaction. The exemplary award, which tripled the proposed purchase price, was deemed proportional to the benefit obtained and within CUTSA's cap.

This highlights the potential risks created through sharing trade secrets during the merger and acquisitions due diligence process.

**5. FTC abandons rule barring non-competes, but remains a cop on the beat**

After the prior administration's robust attempt to bar noncompetition provisions through the Federal Trade Commission's noncompete Clause Rule, the new administration reversed course, and the FTC pivoted to case-by-case enforcement of overbroad restrictive covenants.

In September 2025, the FTC announced an action and proposed consent order against Gateway Services alleging that blanket one-year nationwide non-competes for nearly all employees violated Section 5 of the FTC Act. The proposed order would bar Gateway for 10 years from entering into or enforcing non-competes with most employees, limit customer non-solicitation to contacts within the past 12 months, and require notice that prior non-competes are void, with narrow exceptions for business sales and certain senior equity-linked arrangements.

The day after announcing that consent order, the FTC announced it would withdraw its appeals of the district court rulings vacating and enjoining the noncompete rule in Ryan LLC v. FTC and Properties of the Villages, Inc. v. FTC. The FTC voted 3 -1 to accede to a vacatur of the noncompete Rule. Chair Andrew Ferguson and Commissioner Melissa Holyoak reaffirmed their position that the FTC lacked the statutory authority to issue the 2024 rule, and announced that noncompete policy should instead be developed through targeted enforcement actions and judicial precedent.

Although the FTC's decision to abandon the noncompete Rule supports employers' interests, employers are hardly of the woods. The decision reflects one aspect of a broader wave of change in how courts and policymakers are approaching both restrictive covenants and trade secret protections.

**What should companies do now?**

These events show how restrictive covenant and trade secret law is trending away from sweeping federal regulation and more toward a mix of state legislation, targeted agency enforcement and high-stakes trade secret misappropriation litigation. Given the serious risks these changes invite, companies should start by considering the following, with the understanding that most risks come from departing employees and business partners:

- **Revisiting restrictive covenants to ensure they are appropriately tailored and measured with respect to the scope of geography, activity and temporal restrictions, and avoiding a one-size-fits all approach particularly, with respect to low-wage earners and lower-skilled workers.**
- **Taking calculated steps to safeguard trade secrets, including: using state-of-the-art electronic and physical tools to restrict and trace access to trade secrets, including multifactor authentication tools, encryption and firewalls, and limiting the use of external drives; limiting access to and guarding areas where confidential information is stored; and installing security cameras in sensitive areas.**
- **Labeling documents as confidential and/or trade secrets.**
- **Crafting comprehensive confidentiality agreements, and including confidentiality policies in employee handbooks and the code of conduct.**
- **Training employees on best practices for protecting trade secrets from disclosure to and use by third parties.**
- **Using ironclad nondisclosure agreements with third parties (e.g., vendors, contemplated merger partners, suppliers and independent contractors).**
- **Limiting the sharing of files with third parties and employees who lack a legitimate need.**
- **Conducting well-planned employee exit interviews, reminding departing employees of their confidentiality obligations, and demanding the prompt return of electronic equipment and all company documents and information.**
- **Reviewing communications and computer activity—e.g., reviewing what files were accessed and downloaded and when, and how they were used, if possible, and what emails an employee sent to their personal email account—for suspicious departures and circumstances.**
- **Minimizing the risk of disclosure in the context of remote work, including: using secure technology; requiring appropriate levels of physical security in home offices; and limiting the sending of confidential information to personal email addresses.**
- **Instructing employees in the onboarding process—verbally and in writing—that they may not disclose or use confidential information or trade secrets belonging to any former employer or other third party.**

*—Steven J. Pearlman is chair of the Restrictive Covenant and Trade Secret Practice at law firm Proskauer Rose, where Jonathan Gartner and Jake Lee are associates.*