



41st
**CONTROLLERS'
ROUNDTABLE**

2025 Employment Law Briefing: Insights & Forecasts for 2026

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San Antonio, Texas



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Agenda

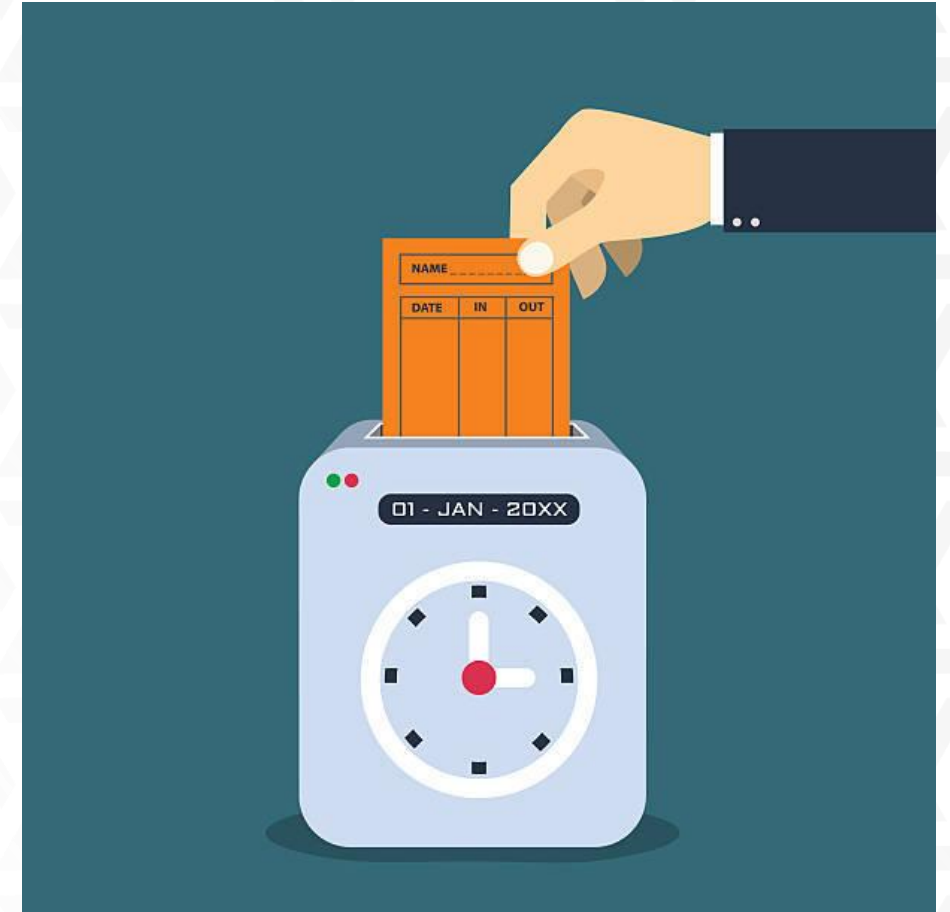
- No Tax on Overtime
- Immigration
- NDAs & Sexual Misconduct Confidentiality Ban
- Cybersecurity Safe Harbor
- Cannabis Update
- AI in the Workplace
- Non-Compete Agreements
- 2026 Predictions



AGENDA

No Tax on Overtime!

- **Recap:** As part of the “Big Beautiful Bill Act,” tipped and non-exempt workers can **deduct** significant portions of their **overtime** (and tips) income starting in TY 2025 (expires after TY 2028)
- **Basics:**
 - Non-exempt employees only
 - Must earn less than \$150,000; couples must earn less than \$300,000 (thresholds will be adjusted for inflation in future years)
 - Can deduct up to \$12,500 (single filers) and \$25,000 (married, filing jointly)
 - To benefit, employers must track overtime separately on W-2 or employee can use year-end paystub
- **Effect:** Could make **overtime more attractive**



ICE Raids and I-9 Audits

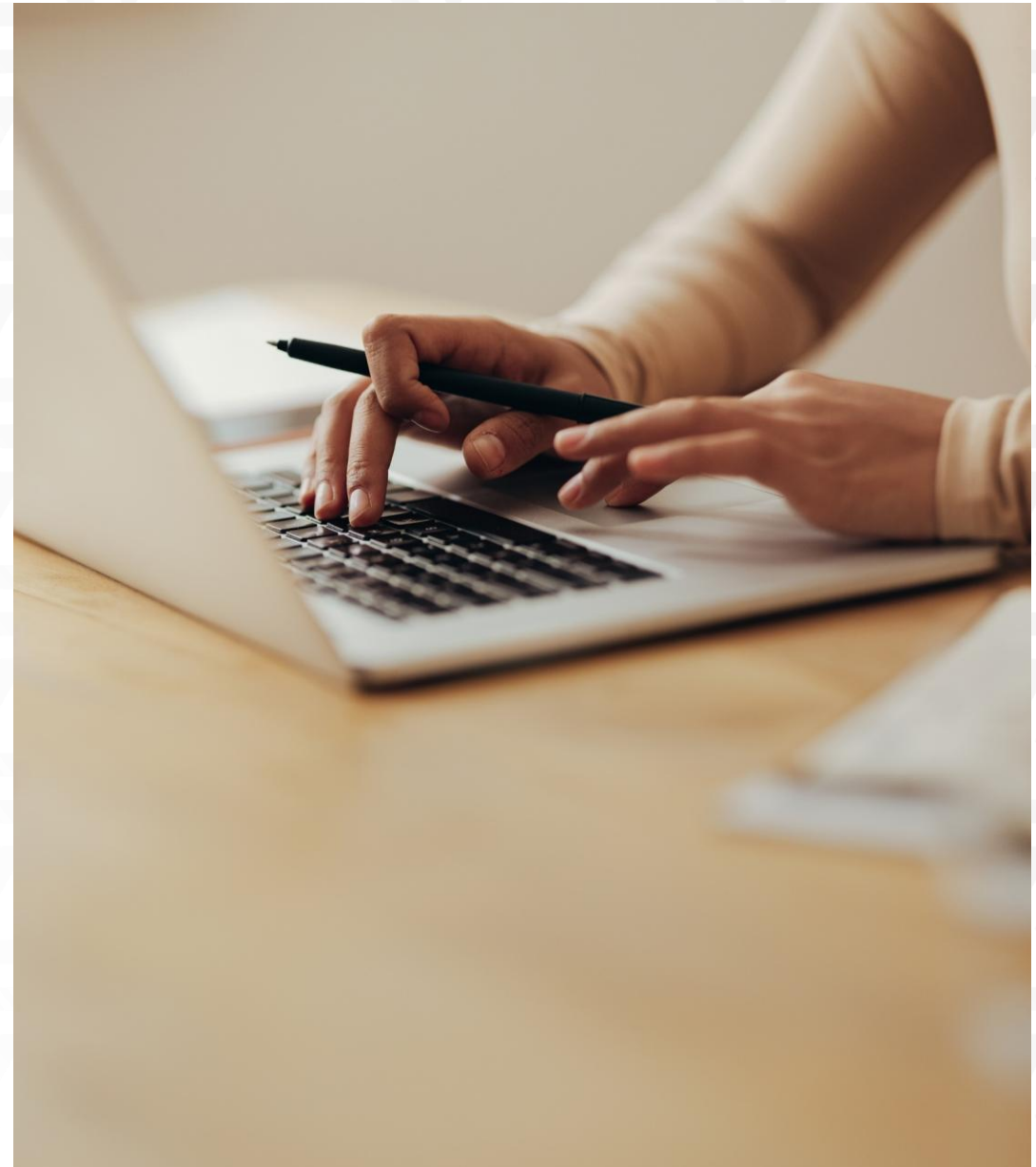
Be Prepared!

- Hotels and restaurants **no longer exempt**
- ICE has detained **60,000** people since Jan. 20 (i.e., doubled)
- **How to prepare:**
 - Audit and update I-9s
 - Train staff on I-9 compliance
 - Keep I-9s separate from personnel files
 - Create and disseminate plan for ICE raid
 - Ask for warrant (administrative, judicial, or none)
 - Call your immigration attorney
 - For I-9 audits, employers are entitled to 3 days to respond

Non-Disclosure Agreements & Sexual Misconduct

SB 835 / HB 748: “Trey’s Law” (eff. Sept. 1, 2025)

- **voids NDAs** restricting disclosure of **sexual abuse or assault**, including human trafficking, child sexual abuse, and rape
 - Not applicable to gender discrimination or basic sexual harassment
- Allows continued confidentiality of settlement amounts, but not the facts or occurrence of abuse
- Applies to **ALL current and future employment contracts, settlement agreements, and policy documents**
- **What’s next?** Evaluate any risk and consider auditing agreements



Cybersecurity Safe Harbor

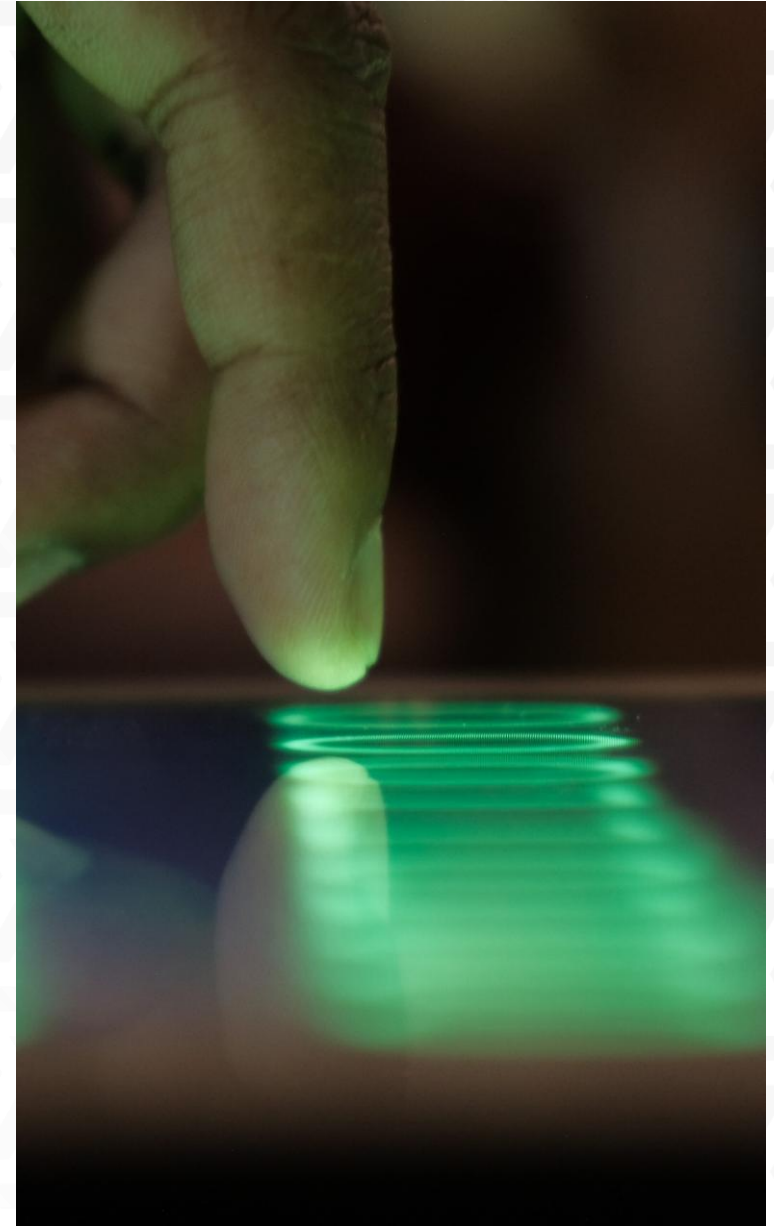
SB 2610

Safe Harbor for Small Businesses

New law provides **liability protection** in the event of a security breach

To qualify, must be:

- Small business (under 250 employees)
- Maintain a **written cybersecurity program**
- **Train** employees regularly
- Conduct vendor **audits** and **incident response planning**



Cannabis Use



- **STILL LEGAL** recreational use
 - Legalized hemp strain is potent enough to produce same high as other strains when used in edibles and drinks
 - Gov. Abbott vetoed bill to repeal legalization and issued executive order for agencies to regulate cannabis
- Legislative also expanded scope of **medical marijuana** under the Compassionate Use Act (CUA)
 - Qualifying conditions now include epilepsy, seizures, multiple sclerosis, autism, cancer, PTSD, certain chronic pain conditions, certain traumatic brain injuries, Crohn's and irritable bowel disease, and terminal illnesses
 - Qualifying conditions are likely disabilities protected by the ADA and state law
- Still **illegal for employees to be high** and employers should continue to vigorously enforce drug/drug testing policies **but** be careful if employee is an authorized medical marijuana user



Artificial Intelligence in the Workplace

HB 149: Employer Compliance Under TRAIGA

HB 149 - Texas Responsible Artificial Intelligence Governance Act (TRAIGA)

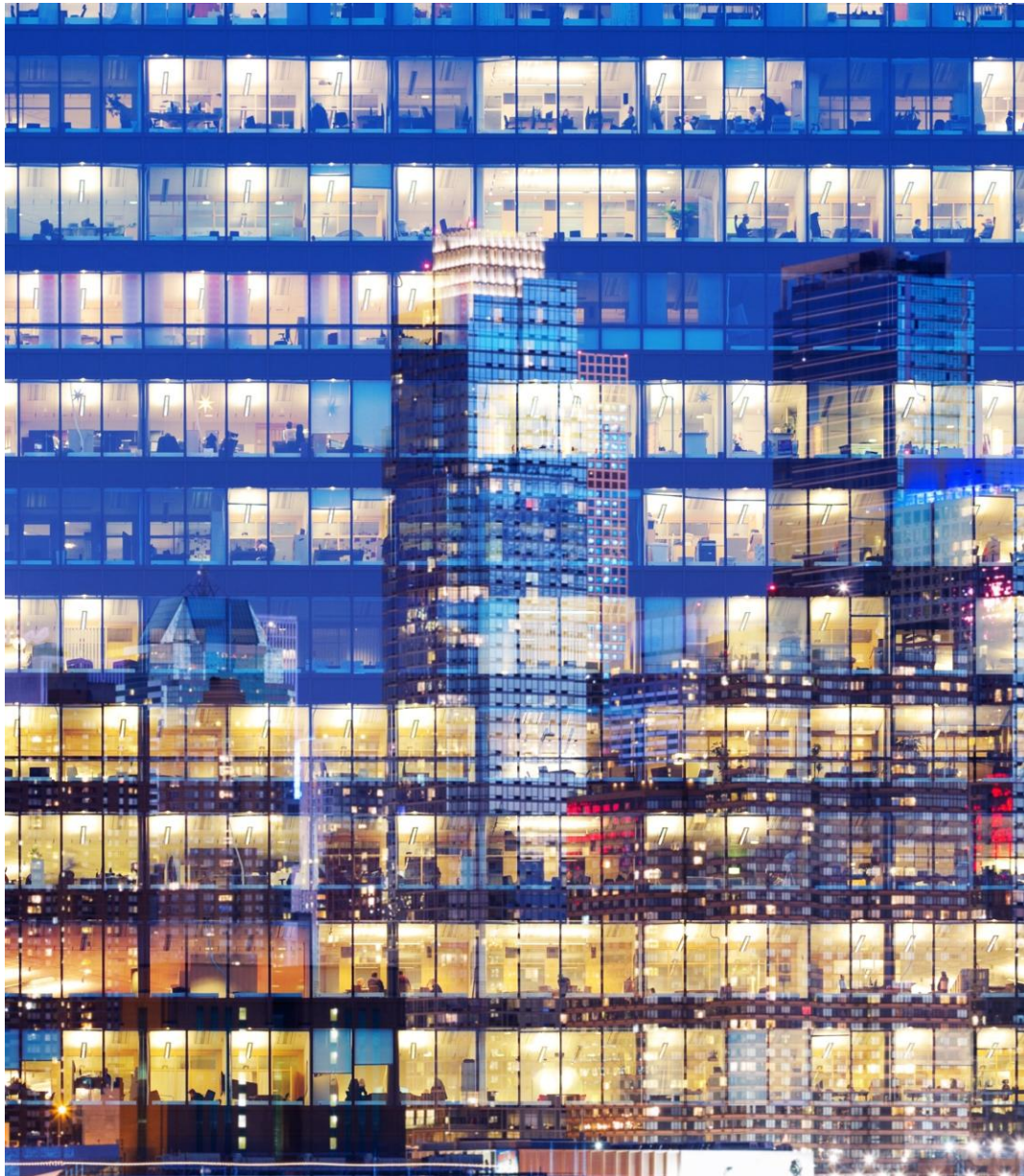
- Effective January 1, 2026
- Mostly applies to governmental entities **but** prohibits private AI systems facilitating **discrimination, behavioral manipulation, or use of biometric data without consent**
- Employers using AI must:
- **Audit** and **document** how AI is applied in hiring and evaluation
- Read AI vendor literature and ask questions about particular AI applications and effects
- Be prepared to demonstrate that AI does not cause discriminatory outcomes

HB 149: TRAIGA Advisory Council

Texas Artificial Intelligence Advisory Council (TRAIGA Council)

- Establishes the **TRAIGA Council** within the Department of Information Resources
- Council responsibilities:
 - Monitor how AI is used in the workplace
 - Recommend standards for ethical use
 - File biennial reports guiding future regulations





National AI Regulation

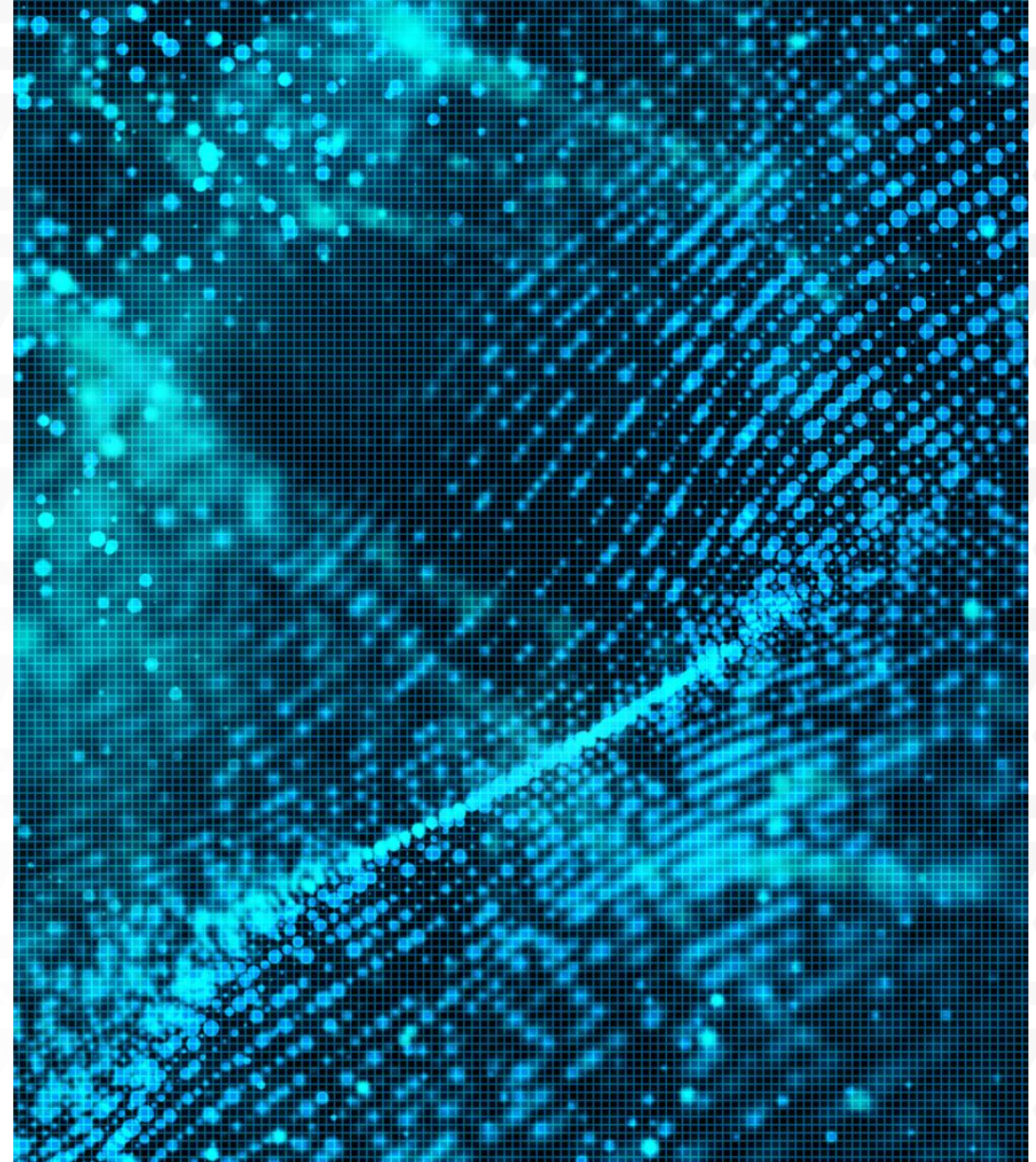
- **New York City:** Requires **bias audits** for AI-powered hiring tools.
- **Illinois:** Video interview analysis requires **advance notice and consent**.
- **California:** Proposed AI transparency and bias mitigation legislation.
- **Colorado:** Postponed the effective date of its first-in-the-nation AI anti-discrimination law from February to June 2026 to allow more time for revisions.
- **Federal movement:** Agencies like FTC and EEOC developing AI fairness frameworks, but have seen push back on regulation going as far as some states
- **Federal EO:** Restriction on use of disparate impact liability

National AI Regulation (Part II)

Common Regulatory Themes:

- Notice & transparency obligations
- Independent bias assessments
- Recordkeeping & audit trails

Multistate employers must coordinate policies to comply with multiple, and sometimes conflicting, requirements.





Human Trafficking Requirements

- Expanded **training mandates** on identifying and reporting human trafficking to:
 - Healthcare providers, medical assistants
 - Emergency services professionals, first responders
- Required **posting** of designated **hotline signage** in facilities.
- **Retaliation Protections:** stronger safeguards for hospital employees who make a good faith report of suspected human trafficking
- Non-compliance may result in both **regulatory penalties** and **reputational harm**

Miscellaneous



- **Commission Agreements/Plans**
 - **Reminder:** Texas law requires **written authorization** from employee for **all wage deductions**
 - **Ensure** company has a written commission agreement or plan and **audit** personnel files to ensure every employee signed/acknowledged it
 - Without it, could be subject to Wage Claim before the TWC or a lawsuit
- **Military Leave Requests Hit 20-year High**
 - National Guard deployments are highest since 2006
 - Revisit USERRA obligations and military leave policies

Non-Compete Agreements

- **What are they?**
- **How are they governed in Texas?**
- **Will the federal government ban them?**
- **Action items to ensure your company is protected.**

Non-Compete Basics

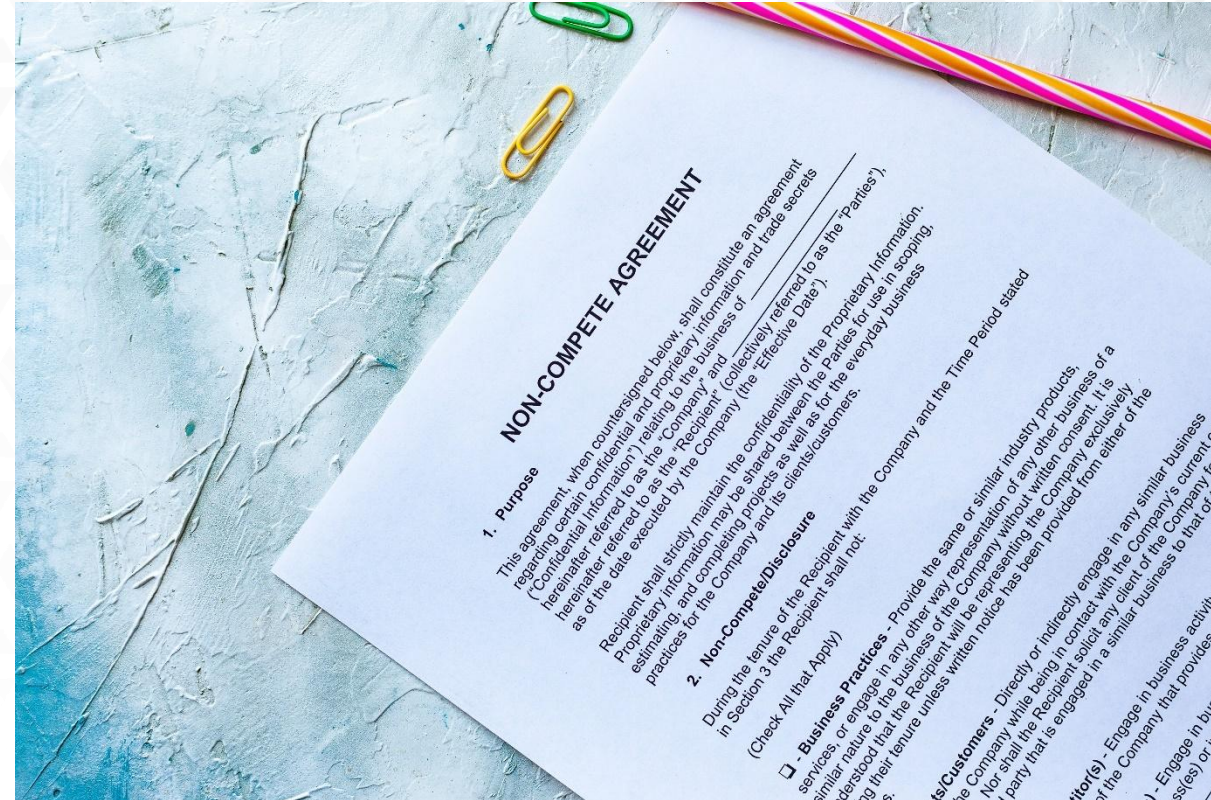
What is a “non-compete agreement?”

Umbrella term for post-employment restrictive covenants, including:

- Customer non-solicitation (recommended)
- Employee non-solicitation (recommended)
- Supplier/vendor non-solicitation (possible)
- Non-competition (optional)

Where are non-compete covenants usually found?

- Employment contracts
- Standalone contracts (NDAs)
- Equity agreements/ERISA plans



Primer on Texas



Texas Uniform Trade Secrets Act (TUTSA)

- Identical to other states' uniform acts
- Nearly identical to DTSA

Purpose of Agreements

- Under the Covenants Not to Compete Act (CNC), covenants are meant to “to protect the goodwill or other business interest of the promisee”

Covenants Must be Reasonable

- Under CNC, covenants must be “reasonable” as to time, geographical area, and scope of activity to be restrained
- Translation: essentially “protectible interest,” i.e., restraints are necessary to protect the company’s confidentiality information or trade secrets from being used or disclosed against the company and/or to benefit a competitor

FTC Ban on Non-Competes

- **Background:** The Federal Trade Commission (FTC) finalized its rule in April 2024 banning traditional non-competition provisions
 - At the time, both Republican commissioners issued scathing opinions against the ban
- **What happened:** Federal Judge Ada Brown of Dallas struck down the rule in October 2024 finding the FTC went beyond its constitutional and statutory authority
 - The FTC appealed that ruling and a similar one from Florida
 - On March 7, the FTC stayed the appeals

New Administration = New FTC



- On March 18, President Trump dismissed the two Democratic commissioners
- On April 11, the Senate confirmed a third Republican commissioner, Mark Meador

BUT... (there's always a but)

- **Comments by Chairman:** New FTC Chair Andrew Ferguson changed his tune recently saying, “the ability to command a reasonable wage on the labor market is an individual’s single most valuable commodity.”
- **Joint Labor Task Force:** The FTC announced plans for a Joint Labor Task Force to identify and prosecute labor-market practices the FTC deems “deceptive, unfair, and anti-competitive” and harmful to workers and identify legislative and regulatory “opportunities” to remove barriers to “labor market participation, *mobility*, and competition.”
 - The FTC’s memo says employers “*can* use [non-competes] to impose unnecessary, onerous, and often lengthy restrictions on former employees’ ability to take new jobs in the same industry after they leave their employment.”
 - Memo also calls out “termination penalties” in employment agreements as impeding workers from switching jobs by imposing “unjustified fees” when workers want to leave their jobs.

What's Next

- **What does this mean?** Clear signal that the FTC will continue to scrutinize non-compete agreements it feels unfairly harm worker mobility. Unlike lateral agreements, such as no-poach or wage fixing agreements (automatically illegal), it appears that the FTC may examine the nature of the restrictions and the type of worker signing them.

**Stay
Tuned!**

- **Meantime:** (1) Review non-competes; (2) ensure managers, executives, and sales employees (not everyone) have agreements with non-disclosure, employee non-solicitation, customer non-solicitation, and non-competition provisions, and (3) tailor agreements as necessary to maximize effectiveness and enforceability.

Non-Competes Remote Work World

The Age of Remote Work

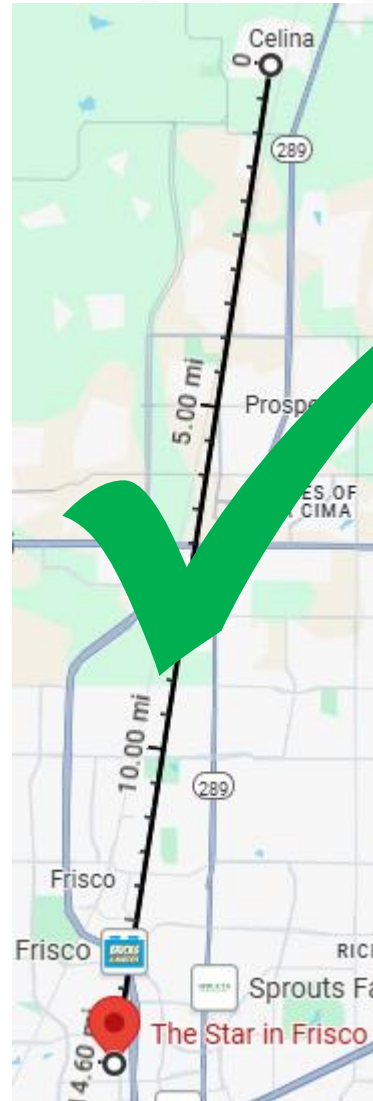
- **Background:** According to the DOL, 35% of employees work remotely at least part-time. Among college graduates, that number is 52%.
- During COVID, many employees moved, sometimes to other states and sometimes without informing their employers.
- **What does this mean?** Non-compete provisions, especially mileage restrictions, may be insufficient.



Example

- **Non-Compete Covenant:** “Employee shall not provide competitive services within 25 miles of Company’s office where Employee reported during the 24-month period prior to Employee’s last day of employment.”

Celina



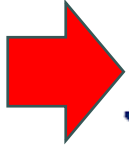
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Example

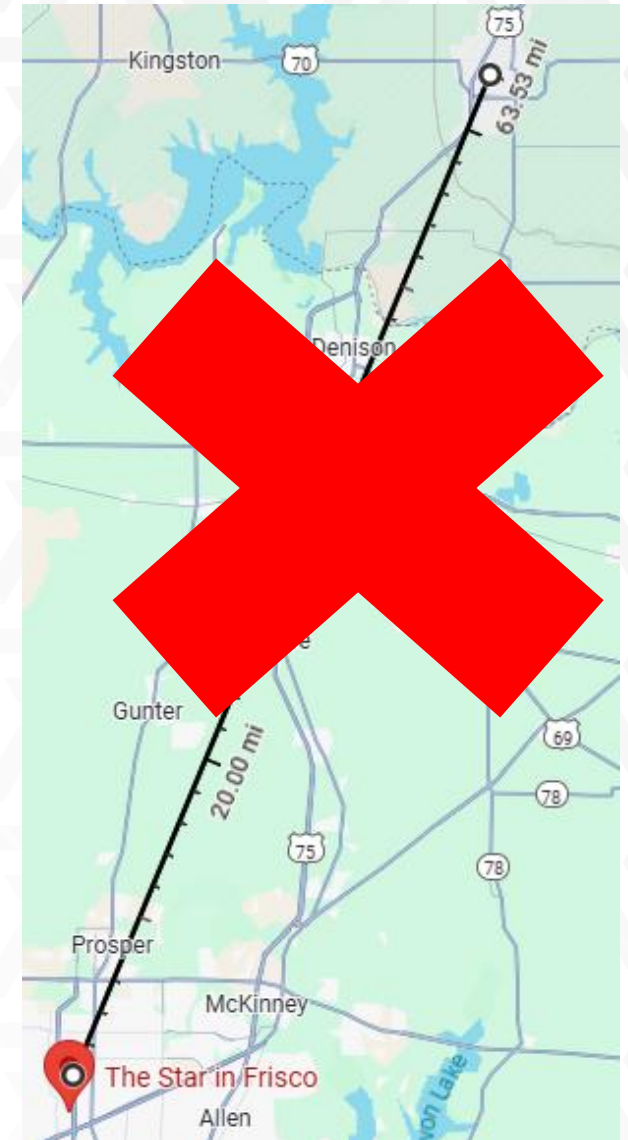
- **Non-Compete Covenant:** “Employee shall not provide competitive services within **150 miles** of Company’s office” or “**within the State of Texas.**”
- **Pop Quiz #2:** What do Oklahomans hate most?

Answer



- **Also hate non-competes, which are banned in Oklahoma**

Durant, OK

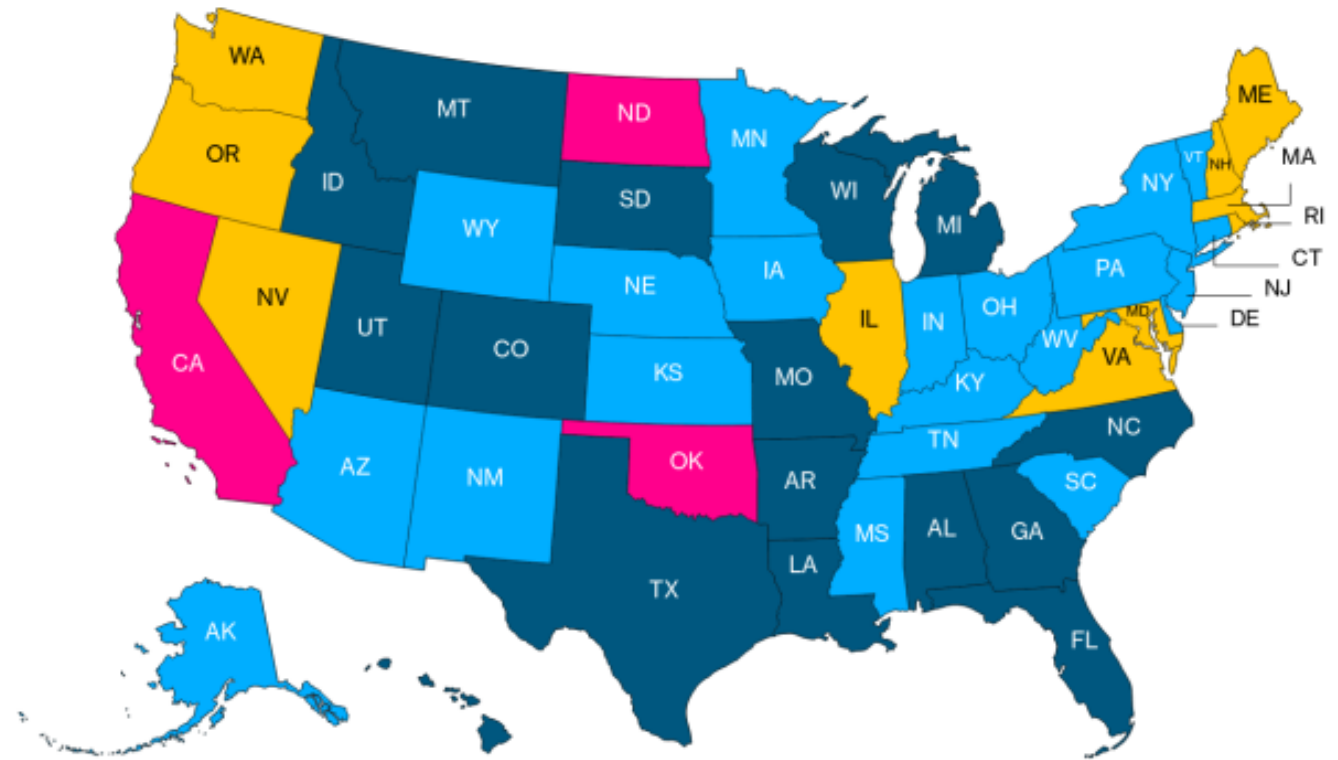


State Bans or Restrictions on Non-Competes

Limits on Employee Noncompetes

statutes depicted, not accounting for case law

- allowed if not overly broad
- no statute on noncompetes
- largely banned
- banned for low-wage/hourly workers



Source: Bloomberg Law analysis

Bloomberg Law

Action Items to Protect Business

- **Review** non-compete agreements and locations of remote employees
- Ensure the geographic restriction covers **remote employees** but is also enforceable under state law
- **Call** your friendly, neighborhood non-compete attorney for help



Minimum Salary for Exempt Employees

- **Background:** U.S. Department of Labor raised the exempt salary threshold for “white collar” administrative, executive, and professional employees in April 2024
 - Rule raised exempt salary threshold to \$43,888 (\$844/wk.) starting July 1, 2024, and \$58,656 (\$1,128/wk.) starting on January 1, 2025
- **What happened:** Federal judge in Plano struck it down in late 2024 and Trump administration declined to appeal, so minimum reverted back to 2019 level: \$35,568 (\$684/wk.)

Fearless Predictions for 2026



Employment Law Predictions for 2026

Trump Administration Election-Year Kick

- **Overtime salary minimum:** DOL will modestly increase the overtime salary threshold to mid-\$40k (i.e., \$10k-\$12k increase similar to Trump 1.0)
- **Non-Competes:** FTC will take firmer action to curtail traditional non-compete covenants for lower- and middle-wage workers
- **Immigration:** Enforcement will ramp up with new funding and infrastructure and E-Verify will become mandatory
- **Independent contractors:** DOL will return to more lenient independent contractor rule issued during Trump 1.0
- **Joint employer rule:** DOL will shift back to more employer-friendly joint employer standard
- **Minimum wage:** Per Trump's campaign promise to raise wages, Congress will pass a modest increase in the federal minimum wage



Thank you!

Questions?

- Scan the QR code
- Opt-in for Texas and other areas



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