CONCLUSIONS OF THE FOURTH STUDY COMMISSION: USE OF NON-COMPETITION, CONFIDENTIALITY, AND LOYALTY LAWS GLOBALLY

2025

BAKU

1. Introduction

In an increasingly globalized and mobile workforce, the tension between protecting business interests and preserving worker autonomy has never been more pronounced. Across jurisdictions, employers have relied on restrictive covenants—such as non-competition, loyalty, and confidentiality clauses—to safeguard proprietary information, maintain competitive advantage, and ensure workforce stability. Yet the treatment of these clauses varies, shaped by statutory frameworks, constitutional principles, and judicial precedent.

Not only do legal standards differ from one region to another, the extent to which these laws are developed differs dramatically. Some countries lack statutory provisions and/or case law on these agreements altogether. In other countries, the law is just beginning to develop. And in others, the body of law is well established. But as a whole, these clauses are facing mounting legal challenges, with growing attention paid to their reasonableness, equity, and effect on employee freedom.

This narrative summary explores how 36 jurisdictions approach employee restriction clauses, highlighting the diverse legal landscapes, evolving enforcement standards, and emerging challenges posed by remote work and cross-border employment.

2. Legal Frameworks: Main Legal Provisions

The regulation of non-competition, loyalty, and confidentiality clauses ranges among jurisdictions, with most countries adopting either statutory provisions or relying on constitutional and common law principles. But despite their differences, there is a shared emphasis on balancing employer protections with employee freedoms. Courts frequently accomplish this by weighing the need to protect company secrets with an employee's level of training and responsibility. This balancing act leads to more frequent use of these agreements for senior-level management and in highly sensitive sectors like technology and pharmaceuticals.

Statutory Regulation

Of the responding jurisdictions, 25 have enacted specific legislation governing non-competition clauses. Some of these statutes lay out specific requirements that these clauses must meet, while others merely provide factors to assess their validity. Additionally, regulations on loyalty and confidentiality provisions are often more broadly worded.

Constitutional and Common Law Principles

Some jurisdictions, like Germany, Greece, and Brazil, have no legislation that specifically addresses non-competition agreements, though Brazil has legislation related to trade secret and loyalty issues. These countries' respective constitutions nevertheless help guide resolution of these cases. To illustrate, Article 12 of the German Constitution states that "[a]ll Germans shall have the right freely to choose their occupation or profession, their place of work and their place of training."[1] Applying this constitutional provision, German courts require non-competition clauses to be restricted to a reasonable time (typically, no more than three months) and geographic area. Similarly, Article 5 of the Greek Constitution grants individuals "the right to develop freely their personality and to participate in the social, economic and political life of the country, insofar as they do not infringe the rights of others or violate the Constitution and the good usages."[2] The Greek Supreme Civil and Criminal Court invalidated a two-year non-competition agreement under this article because of the excessive duration and lack of financial compensation.[3]

Common law and hybrid countries, like the United Kingdom, Israel, and Australia,[4] also lack specific legislation, instead relying on judicial precedent to formulate their approach to these principles.

3. Judicial Precedents: Validity and Enforcement

---

[1] Grundgesetz [Basic Law], translation at http://www.gesetze-im-internet.de/englisch_gg/index.html.
[2] 1975 Syntagma [Constitution] 5 (Greece).
[3] Areios Pagos [A.P.] [Supreme Court] 144/2008 (Greece).
[4] In Australia, non-competition agreements are governed entirely by common law, except in New South Wales.

Although most jurisdictions lean on judicial interpretation to shape their laws, the extent to which they do differs between common law, civil law, and hybrid legal systems. And several jurisdictions do not rely on case law at all. The following section provides examples from each type of legal system.

Common Law Systems

In the United Kingdom, the law on non-competition clauses is entirely judge-made. Courts will uphold these agreements, particularly for senior employees, if they are restricted in scope and duration (typically not exceeding 12 months), and the employer's legitimate interest cannot be sufficiently protected by a less burdensome restraint. Interestingly, in the United Kingdom, over 25% of employees are subject to non-competition agreements. These provisions are most prevalent in the technology sector but are also used in 20% of the contracts related to retail, food services, and education. Although the United States has no federal statute governing non-competition agreements, the Federal Trade Commission has issued guidance that has since been enjoined by a court. Instead, statutes in this area are at the state level.

Civil Law Systems

In Spain and Estonia, courts have expanded on statutory provisions. For example, in addition to requirements for duration, geographic and sectoral scope, and financial compensation, the Spanish Supreme Court has established that non-competition agreements must be reciprocal, so agreements that allow a company to unilaterally waive them are invalid. But in Romania, Slovenia, and Taiwan, courts primarily rely on the plain language of their statutes. Three countries—Algeria, the Philippines, and Morocco—on the other hand, do not have express provisions that govern non-competition agreements. But their courts must consider things like duration, territorial scope, the nature of the position, and compensation.

Hybrid Systems

In Canada, courts have provided guidance on the application of these laws. The Civil Code of Quebec requires that a non-competition clause "be limited as to time, place, and type of employment, to what is necessary for the protection of the legitimate interests of the employer."[5] The Supreme Court explained that in analyzing the legitimate interests of the employer, courts should follow a contextual

[5] Code Civ. art. 2089 (Que.).

approach and assess the circumstances in which the obligations were assumed.[6] Factors to consider include: "the nature of the business's activities, the parties' experience and expertise and the fact that the parties had access to the services of legal counsel and other professionals."[7]

No Judicial Interpretation

A minority of countries, such as Japan and Liberia, have no recorded judicial precedent interpreting these kinds of laws.

4. Validity Criteria: Scope, Duration, Compensation, and Type of Work

Non-Competition Agreements

For the statutes that contain particular requirements, common provisions are:

(1) Written agreements
(2) Defined time limits
(3) Clear geographic scope
(4) Financial compensation

For instance, Angola allows non-competition clauses, subject to four requirements: (1) contractual validity, (2) limited duration of up to two years, (3) defined scope limitations, and (4) financial compensation equal to half the average salary paid during the restriction period.[8] Italy also requires that agreements (1) be in writing, (2) contain clear scope and duration limits, and (3) provide compensation. Finland, however, exemplifies a jurisdiction that provides factors to analyze validity. It mandates that courts "take into account" (1) the nature of the employer's operations, (2) the need for protection related to keeping a business or trade secret, (3) special training given to the employee by the employer, and (4) the employee's status and duties.[9] As a result, such agreements are most common at the executive level. Iceland likewise prohibits non-competition agreements if the restriction is broader than necessary to prevent competition or unfairly restricts the other person's freedom to work.[10] Although far less common, some countries, like Georgia, exempt specific fields such as education, science, and culture from regulation on non-competition agreements. And even more rare, countries like Burkina Faso ban non-

[6] Payette v. Guay inc., [2013] S.C.R. 95 (Can.).
[7] *Id.*
[8] Gen. Labor Law art. 24 (Angl.).
[9] Employee Contracts Act 55/2001, ch. 3, sec. 5 (Fin.).
[10] Law on Contracts art. 37 (Ice.).

competition agreements altogether unless the termination is the fault of the employee.

Loyalty and Confidentiality Agreements

Loyalty and confidentiality provisions, on the other hand, are often more loosely defined. But the reality is that a strict confidentiality agreement can be tantamount to a non-competition agreement.

Consider Portugal, where an employee must "[m]aintain loyalty to the employer" "by not negotiating on their own or in competition with them, nor divulging information concerning their organization, production methods or business."[11] Five countries—Armenia, Moldova, Mongolia, Paraguay, and Poland—have similar laws on loyalty and confidentiality. But several countries, like Sweden, the Netherlands, Denmark, and Serbia, have enacted more comprehensive laws related to trade secrets.[12]

5. Labor Market Impact and Global Challenges

Increased globalization and employee mobility have created implementation challenges for these contracts. The rise of remote work and cross-border employment, for example, has led to complications around choice-of-law conflicts and enforcement across jurisdictions.

Although the impacts of these employment restrictions vary from country to country, the global trend favors greater worker protection. Most countries surveyed have imposed limitations on these types of contracts. And many countries have raised concerns that these clauses disproportionately affect lower-wage employees who lack bargaining power when negotiating terms. To combat this impact, Austria, and in the United States—Colorado and Virginia—have passed laws that prohibit these agreements for all employees under a specified salary range. And Australia and New Zealand have proposed legislation that would also put a salary cap on these clauses.

6. Conclusions

The global landscape of non-competition, confidentiality, and loyalty provisions reflects a delicate balance between protecting business interests and upholding individual freedoms. Despite varying statutory frameworks and judicial

[11] Código do Trabalho [Labor Code], art. 128, no. 1, para. f (Port.).
[12] *See, e.g.*, Lag (2018:558) om företagshemligheter (Swed.).

interpretations, a common theme emerges: increasing scrutiny of restrictive covenants and an emphasis on proportionality, fairness, and worker mobility.

7. New Board Composition

After holding elections in Baku (2025), the Board of our commission now has the following composition:

President Mr. Paulo Dornelles (Brazil)

1st Vice-President Mr. Denis Jacques (Canada)

2nd Vice-President Ms. Mette Lyster Knudsen (Denmark)

Advisory Board Ms. Cynthia M. Rufe (USA)

President Emeritus Ms. Margaret McKeown (USA)

8. Next Year's Topic

Our next year's topic will explore the increasingly relevant issue of aging in the labor market and its legal, social and ethical impacts.

"Aging – the legal framework surrounding age discrimination, pensions, and other laws relating to aging and the social impact of aging".