



# Your Non-Compete and Trade Secrets To-Do List for August 2024

Insights  
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Courts and lawmakers around the country are constantly refining the laws on non-competition, non-solicitation, and non-disclosure agreements, which means employers need to stay up to speed in order to prevent unfair competition and comply with the law. Even the smallest mistakes can lead to significant liability and business risks – but we’ve got you covered. Each month, the Fisher Phillips Employee Defection and Trade Secrets team – powered by [Blue Pencil Box](#) – provides you with a practical checklist of actions you can take to ensure you are best positioned to avoid liability and protect your business interests. Here is your list for August 2024.

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## Get Ready for the FTC’s Non-Compete Ban, But Don’t Panic

In July, federal courts in Texas and Pennsylvania reached opposite conclusions about whether the FTC’s non-competes ban, set to take effect September 4, is lawful. The [Texas judge held the ban was probably unlawful](#), but it only entered a preliminary injunction that affected the five entities in the case. The [Pennsylvania judge concluded the ban is likely within the FTC’s authority](#), and it denied the plaintiff’s preliminary challenge. The Texas court is going to issue its final decision on the merits August 30, and there is another case in Florida challenging the rule. Employers should prepare for September 4, but with the knowledge that the rule still may be struck down before then.

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## Pennsylvania Healthcare Employers – Get Ready to Comply with New Regulations

Pennsylvania Governor Josh Shapiro signed into law a new bill that will significantly curtail restrictive covenants with health care practitioners, including medical doctors, nurses, and physician assistants. [HB1633, which will go into effect January 1, 2025](#), limits “noncompetes covenants” with healthcare practitioners to one year after separation, and only if the practitioner was not terminated by the employer. The new law also requires employers to give certain notices to patients when a practitioner leaves.

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## **Double-Check Compliance for Covered Employees Under the NLRA**

An Administrative Law Judge with the NLRB ruled in June that an employer's non-competition and employee non-solicitation provisions violated the NLRA, reasoning that the provisions interfered with the employee's ability to engage in protected activity. But a few weeks later, the NLRB's Division of Advice issued a memo concluding that a non-compete provision in an employee's Shareholder Agreement was not unlawful, primarily because the Shareholder Agreement was entered voluntarily rather than as a condition of employment. The NLRB's position on restrictive covenants is novel and fast-moving, so work with your attorneys to ensure you are staying ahead of the curve.

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## **Make Sure Your Agreement is Not a "Pile of Words"**

The non-compete in this July 18 case was governed by Delaware law, applied to a C-suite employee, and contained detailed definitions of the plaintiff company, competing businesses, the restricted territory, and the prohibited behavior – all factors presumably favoring enforcement. But in this decision, the Chancellor found that the complexity of the agreement's interlocking, expansive definitions made the non-compete, ultimately, a "pile of words." The court refused to "blue pencil" the provision to make it reasonable and denied the plaintiff's motion for a preliminary injunction.

## **Blue Pencil Box Can Help!**

To stay up to speed, check out one of FP's latest resources – Blue Pencil Box. This comprehensive resource not only provides detailed daily summaries of cases and laws involving non-competes and other restrictive covenants, but also maintains a comprehensive database and customizable checklists to help you comply.

## **Conclusion**

We will continue to monitor developments and provide updates as warranted, so you should ensure you are subscribed to Fisher Phillips' Insight System to gather the most up-to-date information directly to your inbox. If you have questions, please contact the authors of this Insight, your Fisher Phillips attorney, any attorney in our Employee Defection and Trade Secrets Practice Group.

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