

Executive Summary

The National Association of Manufacturers conducted a survey on the effects that a ban of noncompete agreements would have on manufacturers. Prior to this survey, manufacturers had previously stated that the Federal Trade Commission's proposed ban would significantly affect their business models, employees and operations. The survey ran from Thursday, Feb. 16, until Monday, Feb. 27, and received significant feedback with 150 respondents completing the survey.

Background

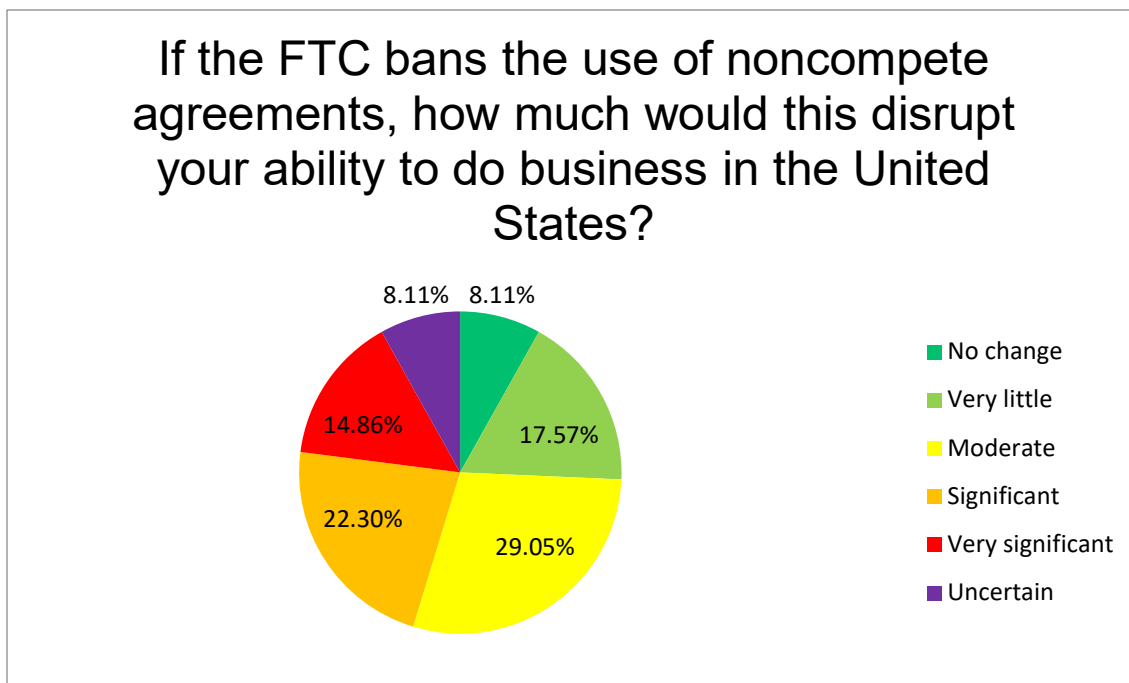
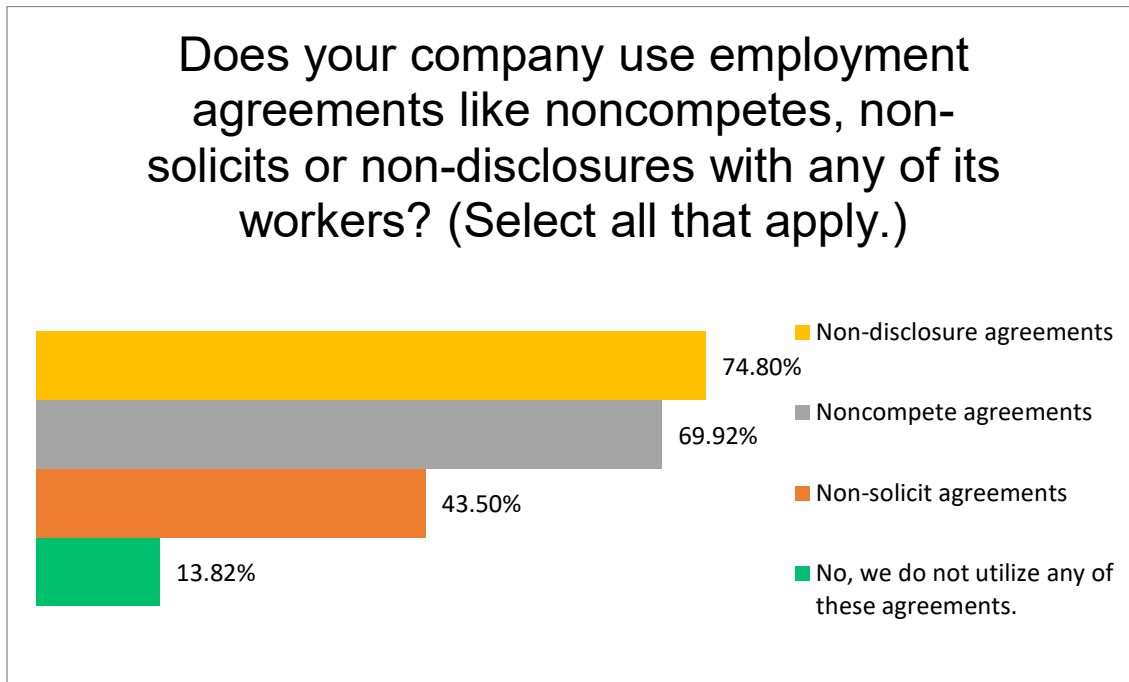
On Jan. 19, the FTC formally [proposed](#) a novel rulemaking to ban noncompete agreements in the workplace. While the rule does not directly apply to all types of employment restrictions, some restrictions, like non-disclosure agreements, could be subject to the rule if they are broad enough in scope. The proposed rule's blanket ban on the use of noncompete agreements goes far beyond the intended use of these agreements. Many manufacturers use noncompete agreements to ensure that their intellectual property and investment in their senior leadership are protected should that employee seek a new position at a different company.

Summary of Findings

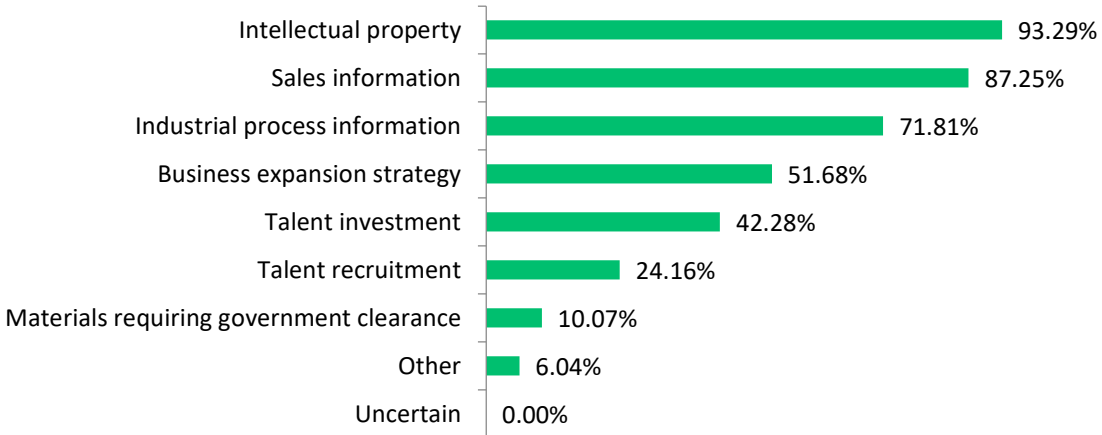
- **70% of Manufacturers Use Noncompetes:** Approximately 70% of respondents use noncompete agreements, and 75% use non-disclosure agreements. The FTC's proposed rule would ban noncompetes and any non-disclosure that they interpret as a de-facto noncompete. (See Question 1.)
- **Noncompetes Are Vital to Protecting Manufacturers' Intellectual Property:** Respondents stated that their top priorities that they protect under noncompete agreements are intellectual property (~93%), sales information (~87%), industrial processes (~72%) and business strategy (~52%). (See Question 5.)
- **Key Personnel Exist at All Levels:** The top positions covered under noncompete agreements are senior managers (~85%), sales employees (~75%) and engineers (~65%). (See Question 2.)
- **Banning Noncompetes Will Hurt Manufacturers:** The FTC's ban of noncompete agreements would cause a disruption to approximately 66% of manufacturers. That breakdown shows that 29% of respondents would experience "moderate" effects, with another 22% and approximately 15% seeing significant and very significant effects, respectively. (See Question 4.)
- **Noncompetes Are Used Responsibly and as Needed:** Approximately 89% of respondents tailor their noncompete agreements to last from six months to two years. Around 51% of respondents stated that they use them for more than one year and no more than two years. Another 38% stated that they use them for six months to one year. (See Question 3.)
- **A Ban Will Affect All Manufacturers:** This issue affects large manufacturers and small and medium-sized manufacturers alike, with 51% of respondents representing large manufacturers and 49% representing SMMs. (See Question 10.)

- **A Noncompete Ban Would Harm Future Training and Investment in Employees:** Around half of manufacturers said that noncompete agreements affect their investment in training or related programs. (See Question 6.)

Charts



What does your company use noncompete agreements to protect? (Select all that apply.)



Survey Data

- 1) Does your company use employment agreements like noncompetes, non-solicits or non-disclosures with any of its workers? (Select all that apply.)
 - a. Noncompete agreements – 69.92%
 - b. Non-solicit agreements – 43.5%
 - c. Non-disclosure agreements – 74.8%
 - d. No, we do not utilize any of these agreements. – 13.82%

70% of Manufacturers use noncompete agreements and 75% use non-disclosures.

- 2) If so, what occupations are covered? (Select all that apply.)
 - a. Senior managers – 84.77%
 - b. Engineers – 64.9%
 - c. Customer service employees – 24.5%
 - d. Sales employees – 74.83%
 - e. Parts production – 14.57%
 - f. Administrative services (accounting, HR, etc.) – 34.44%
 - g. Information technology – 37.09%
 - h. Construction or repair – 11.26%
 - i. Uncertain – 2.65%
 - j. Other (please specify) – 19.21%

- 3) How long is the noncompete agreement in effect following the employee's departure?
 - a. 6 months or less – 2.68%
 - b. Above 6 months to 1 year – 38.26%
 - c. More than 1 year and no more than 2 years – 51.01%

- d. Other (please explain) – 8.05%
- 4) If the FTC bans the use of noncompete agreements, how much would this disrupt your ability to do business in the United States?
- a. No change – 8.11%
 - b. Very little – 17.57%
 - c. Moderate – 29.05%
 - d. Significant – 22.3%
 - e. Very significant – 14.86%
 - f. Uncertain – 8.11%
- 5) What does your company use noncompete agreements to protect? (Select all that apply.)
- a. Intellectual property – 93.29%
 - b. Industrial process information – 71.81%
 - c. Sales information – 87.25%
 - d. Business expansion strategy – 51.68%
 - e. Talent investment – 42.28%
 - f. Talent recruitment – 24.16%
 - g. Materials requiring a government clearance – 10.07%
 - h. Uncertain – 0%
 - i. Other (please specify) – 6.04%
- 6) Is your company more likely to invest in training or related programs for employees who have noncompete agreements? (Select all that apply.)
- a. Yes, we are more likely to invest in training or related programs *for senior executives who have a noncompete.* – 35.62%
 - b. Yes, we are more likely to invest in training or related programs *for employees with intrinsic knowledge of our business who have a noncompete.* – 37.67%
 - c. Yes, we are more likely to invest in training or related programs for *all employees* who have a noncompete. – 29.45%
 - d. No, noncompete agreements do not affect our investment in training or related programs for employees. – 49.32%
 - e. Other (please specify) – 2.05%
- 7) If the FTC bans noncompete agreements, would you face a loss of talent? (Select all that apply.)
- a. Yes, we would face a loss of talent to domestic competitors. – 43.24%
 - b. Yes, we would face a loss of talent to foreign competitors. – 14.86%
 - c. No, we would not face any loss of talent. – 18.92%
 - d. Uncertain – 37.84%

- 8) Is there any other information that you would like us to know about your use of noncompete agreements?

Summary of Answers:

The FTC's proposed rule will significantly harm many manufacturers. Manufacturers routinely face poaching activity from competitors in certain sectors such as life sciences that puts confidential information at risk. The ability to enforce confidentiality obligations is

extremely difficult absent contractual agreements not to compete or solicit. Companies rarely have the means to investigate even well-founded confidential information theft concerns, and litigation on a hunch of such theft is inefficient and unlikely to survive an early motion to dismiss.

Noncompete provisions offer value in the protection of trade secrets and industrial processes. A ban on noncompetes will suppress manufacturers' collaborative, team approach to production and innovation by forcing companies to compartmentalize employees to reduce leaks of proprietary processes and confidential information. This will also lead to an increased risk of losing employees to competitors that will hire individuals to access their valuable knowledge of products, markets and customers that the competitors did not develop on their own. As turnover increases, efficiency will be reduced and litigation costs will soar as companies seek to prevent this knowledge from being shared with their competitors. Additionally, the deterrent and preventive effect of noncompetes is powerful and preferable to other types of agreements that are difficult to enforce and only become legally actionable once confidential or proprietary information has been compromised.

State laws already require that noncompete agreements are limited in scope and purpose. The FTC's proposal misunderstands the fundamental differences between a retail employee and an advanced manufacturing employee. This proposal will only discourage manufacturers from hiring more workers at a time when manufacturers are averaging more than 800,000 open jobs a month.

- 9) What is your company's primary industrial classification?
- a. Chemicals – 8.05%
 - b. Computer and electronic products – 4.03%
 - c. Electrical equipment and appliances – 6.04%
 - d. Fabricated metal products – 20.81%
 - e. Food manufacturing – 7.38%
 - f. Furniture and related products – 2.01%
 - g. Machinery – 10.07%
 - h. Nonmetallic mineral products – 0.67%
 - i. Paper and paper products – 6.71%
 - j. Petroleum and coal products – 0.00%
 - k. Plastics and rubber products – 8.05%
 - l. Primary metals – 2.68%
 - m. Transportation equipment – 5.37%
 - n. Wood products – 0.67%
 - o. Other (please specify) – 17.45%
- 10) What is your firm size (e.g., the parent company, not your establishment)?
- a. Fewer than 50 employees – 10.74%
 - b. 50 to 499 employees – 38.26%
 - c. 500 or more employees – 51.01%
 - d. Uncertain – 0%