

# Texas Non-Compete Agreements

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Texas has a public policy against undue restraints of trade

Non-Compete Agreements limit free competition

The Courts generally try to limit their application

Court rulings from 1960 forward provide a path toward an enforceable Non-Compete Agreement.

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Basics

Reasonably  
Limited

Time

Geography

Scope

Part of an otherwise enforceable employment agreement

Supported by Consideration  
(Variations on this)

Not so restrictive that employee has no work options

# Protected under such agreements:

Client Lists

Trade Secrets & Confidential  
Information

Special skills provided to  
employee during the employment

# Texas Codified Non-Compete Agreements

## Texas Business & Commerce Code

- 15.50 – Basic Law
- 15.51 – Enforcement and Remedies
- 15.52 – Preemption of other laws

# Tortured history in courts



New Twist – Possible interaction with 2011 TX Law

Texas Citizens Participation Act ("TCPA")

Anti-SLAPP law - SLAPP refers to "strategic lawsuits against public participation."

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- Plaintiff must have a really solid case from the start

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- Defendant may be able to show that it prevents his/her free speech rights.

Options – Much easier to enforce a Confidentiality-Non-Disclosure Agreement that protects the same information noted above:

Client Lists

Trade Secrets

Other confidential information

# New Federal Trade Secrets Law

The Federal Defend Trade Secrets Act of 2016: Employee shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that:

(i)(a) is made in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and

(i)(b) is made solely for the purpose of reporting or investigating a suspected violation of law; or

(ii) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

Texas Civil  
Practice and  
Remedies Code

Title 6 –  
Miscellaneous,  
Chapter 134A.  
Trade Secrets

Affords injunctive  
and damages  
relief including  
attorney's fees

Must have a  
strong case to get  
started

## General advice:

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Work with your business attorney

Have a comprehensive Confidentiality-Non-Disclosure Agreement for all employees

Use Non-Compete Agreements selectively

# Monitoring Employees

Varies by State

Texas is a single consent state

Most of the time, best to tell all parties that recording is pending.

# Monitoring Employees

No restriction on routine security monitoring of work areas.

Obviously, changing rooms or bathrooms are off limits

Highly recommended to post conspicuously that recording is in process.

# Monitoring Employees

Technology can be complicated.

Be sure to have a system for saving recordings that are needed for HR reasons.

Unfortunately, can be of limited value due to poor quality.