



FTC Non-Compete Ban Two Years Later: Enforcement & Workarounds

May 28, 2026



Legal Disclaimer

This presentation has been prepared by Seyfarth Shaw LLP for informational purposes only. The material discussed during this webinar should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The content is intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have.

Speakers



Jesse Coleman
Partner
Houston



Gary Friedman
Partner
New York



Eron Reid
Associate
Houston



Agenda

- 1 | **Rise and Fall of the FTC Non-Compete Rule**
- 2 | **FTC's New Enforcement Approach**
- 3 | **Recent Enforcement Actions & Trends**
- 4 | **State Law Landscape & Emerging Trends**
- 5 | **Delaware & Key Legal Developments**
- 6 | **Drafting Considerations & Alternatives**
- 7 | **Practical Takeaways & Employer Action Plan**



Days of unreflective, unjustified, and anti-competitive non-compete agreements are over. If a company wants to execute a non-compete agreement, they had best be prepared to defend it.

-- FTC Chairman Andrew Ferguson,
*Moving Forward: Protecting Workers from
Anticompetitive Noncompete Agreements*
(Jan. 27, 2026)



The Rise and Fall of the Non-Compete Rule

1

August 2024

- Federal court sets aside the rule in *Ryan LLC v. FTC*, citing arbitrary and capricious overreach.

2

September 2025

- The FTC formally withdraws its appeals and accedes to the vacatur.

3

February 2026

- The FTC officially removes 16 C.F.R. part 910 from the Code of Federal Regulations.

4

Key Takeaway:

- No longer a federal blanket ban on non-competes.
- Employers are free from federal ban, not from federal scrutiny.

2026 Restrictive Covenant Landscape at-a-Glance

FTC Rulemaking

[Vacated]

- The Non-Compete Rule (16 C.F.R. part 910) defeated in *Ryan LLC v. FTC*
- Formally removed from CFR on Feb. 12, 2026

NRLB Stance

[Rescinded]

- *Abruzzo* Memos (GC 23-08 and 25-01) rescinded.
- Federal pressure on standard non-competes eased.

FTC Enforcement

[Active]

- Case-by-case enforcement under Section 5.
- Targeting specific labor-market harms through a Joint Labor Task Force.

State Laws

[Tightening]

- The battleground has shifted locally.
- 12 states and D.C. now enforce strict wage thresholds, with notice requirements expanding.

FTC's New Approach

- **New FTC Leadership**

- Chairman Andrew Ferguson signaled a shift away from a categorical ban on noncompetes
- Views noncompetes as restraints of trade subject to case-by-case analysis
- Emphasized application of antitrust principles (Sherman Act §1; FTC Act §5)

- **Case-by-Case Enforcement Approach**

- FTC adopting a reasonableness standard similar to common law
- Key test:
 - Is the restriction no broader than necessary to protect legitimate interests?
 - Does it balance employer interests against harm to employees and the public?



The case-by-case approach will have effects beyond each individual case. Once firms see that unjustified or overbroad non-compete agreements increase the risk of FTC enforcement, they will not enter into those agreements without giving serious consideration to whether those agreements are necessary to advance some legitimate business interest, and whether a less restrictive agreement could achieve that same end.

-- FTC Chairman Andrew Ferguson,

Moving Forward: Protecting Workers from Anticompetitive Noncompete Agreements

(Jan. 27, 2026)



FTC Non-Compete Actions 2025

Feb. 26, 2025

- FTC Launches Labor Task Force Targeting Noncompetes

Sept. 4, 2025

- FTC Seeks Public Input on Noncompete Impact

Sept. 4, 2025

- FTC Moves to Void *Gateway* Noncompetes (~1,800 Workers)

Sept. 10, 2025

- FTC Warns Healthcare Sector on Noncompete Compliance

Nov. 26, 2025

- FTC Finalizes *Gateway* Order Vacating Noncompetes

Dec. 19, 2025

- FTC Blocks *Adamas* No-Hire Agreements

FTC Non-Compete Actions 2026

Jan. 27, 2026

- FTC Holds Noncompete Enforcement Workshop to Outline Enforcement Priorities

Feb. 12, 2026

- FTC Removes Noncompete Rule From Code of Federal Regulations
- FTC Finalizes *Adamas* Order

Apr. 15, 2026

- FTC Orders *Rollins* to End Noncompetes (18,000+ Workers)
- FTC Sends Warning Letters to 13 Pest Control Companies

May 8, 2026

- FTC Issues *Mortgage Connect* Noncompete Warning



The Commission's enforcement actions, including consent agreements, have a much wider effect that just on the direct subjects of those actions. They set forth, one reasoned decision at a time, the Commission's view of what circumstances make a particular practice lawful or unlawful under Section 5 of the FTC Act. A steady stream of enforcement actions against an unlawful practice provides the markets with transparency about what the agency believes the law requires . . .



-- Statement of Chairman Andrew
Ferguson, *In the Matter of Gateway Pet
Memorial Services* (Sep. 4, 2025)

Tips & Takeaways

Takeaways:

- FTC enforcement approach is still evolving; full scope remains uncertain.
- Early actions have focused on clear overuse (“low-hanging fruit”), such as broadly-applied noncompetes without regard to role or access to sensitive information; potential for expanded scrutiny.

Practical considerations:

- Draft noncompetes to clearly support legitimate business interests (define scope, jurisdictions, and covered entities)
- Review usage to ensure noncompetes aren’t applied broadly across all employee levels regardless of role
- Ensure agreements are narrowly tailored to protect legitimate interests; avoid overly broad restrictions
- Evaluate necessity for hourly/non-exempt workers; consider less restrictive alternatives (e.g., non-solicitation agreements)
- State law compliance does not guarantee protection from FTC enforcement; agreements may still face federal scrutiny



What to Expect?

- Industries that rely most on restrictive covenants remain key targets for Agency enforcement.
- The health care industry remains a key focus for enforcement actions, particularly restrictive covenants viewed to limit patient choice.
- No-hire and similar provisions that functionally limit worker mobility will continue to draw attention.
- Expect continued “education through enforcement,” including targeted test cases to shape precedent.



It's education through enforcement. By bringing enforcement actions against specific businesses executing unjustified, overbroad, unfair, or anti-competitive non-compete agreements, others will take notice and adjust their agreements accordingly.

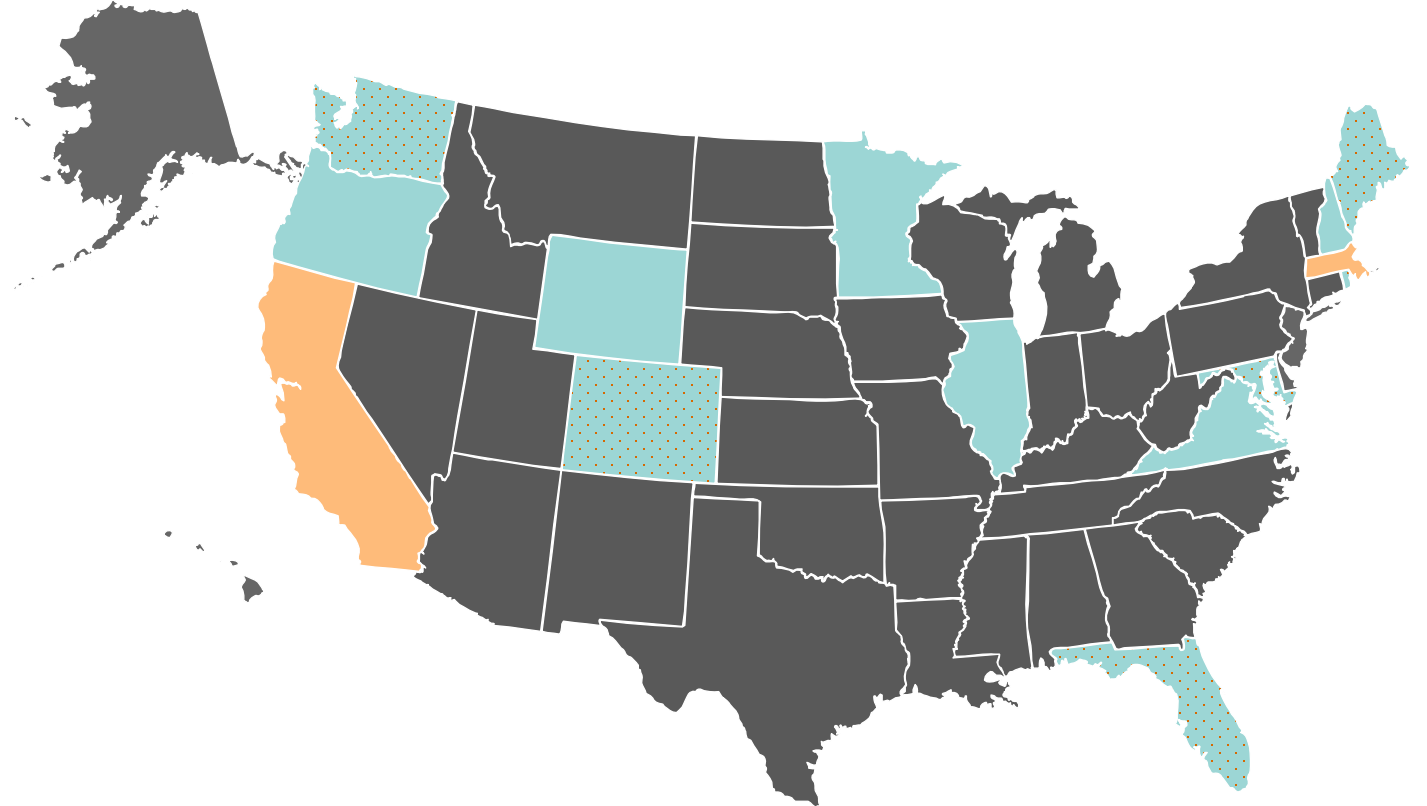
--FTC Chairman Andrew Ferguson,
*Moving Forward: Protecting Workers from
Anticompetitive Noncompete Agreements*
(Jan. 27, 2026)



The Current State(s) of Enforcement: Jurisdictions with Strict Wage Thresholds or Notice Requirements

12 states and the District of Columbia enforce strict wage thresholds or specific income criteria that must be met before a non-compete agreement can be considered valid.

Currently, 9 states and the District of Columbia enforce advance notice-type requirements for companies using restrictive covenants. These laws typically require employers to provide the agreement to a candidate before they accept an offer or to provide a specific period for the individual to review the terms with legal counsel.



Key takeaway: Without a uniform federal scheme, state legislatures have filled the void. Multi-state employer can no longer rely on a single, one-size-fits-all employment agreement.

Where Are We Now? – The Current State(s) of Enforcement

Washington (Full non-compete ban)

- Effective date – June 30, 2027 (retroactive)
- Expands definition of non-compete to encompass agreements that require an individual to return, repay, or forfeit any right, benefit, or compensation with limited exceptions for educational expenses
- Requires employers to make a “reasonable effort” to provide their current and former employees with written notice that current non-competes are now void and unenforceable by October 1, 2027

Florida (Employer-Friendly)

- The Florida CHOICE Act allows employers to use non-compete and garden-leave restrictions for up to 4 years with qualifying “covered employees.”
- “Covered employee” includes anyone earning more than twice the annual mean wage of the applicable Florida county (~\$80k–\$150k).
- The Act mandates injunctive relief for breaches; the employee then bears the burden to seek dissolution or modification.
- The CHOICE Act gives Florida employers a strong mechanism to restrict post-employment competition through garden leave or traditional non-compete terms.

Utah (Healthcare Worker Ban)

- Effective May 6, 2026, employers may no longer enter into non-compete agreements with health care workers.
- The new legislation voids non-solicitation agreements that prevent health care workers from informing patients of their current or future workplace.
- The legislation defines a “health care worker” as an individual licensed and practicing in a wide range of clinical professions, including doctors, nurses, psychologists, and mental health counselors.

Where Are We Now? – The Current State(s) of Enforcement

Montana (Expanded Physician Ban)

- Montana continued to expand its law prohibiting non-compete agreements with certain health care providers.
- Previously, non-competes were previously prohibited for psychologists, social workers, and enumerated categories of mental health counselors.
- Effective January 1, 2026, Montana now prohibits non-compete agreements with any physician.

Virginia (SB 170)

- Limits enforcement of noncompetes for employees terminated without cause unless severance or monetary payment is provided
- Employers must disclose required severance or payment terms at the time the noncompete is executed
- Creates private cause of action against employers who try to enforce unlawful noncompetes (lost compensation, atty's fees, \$10K civil violation)
- Applies only to agreements entered into, amended, or renewed on or after July 1, 2026

Virginia (SB 128/HB 627)

- Separate legislation broadly prohibit noncompetes for health care professionals
- “Health care professional” defined broadly (licensed/certified by Boards of Medicine, Nursing, Counseling, Optometry, Psychology, or Social Work)
- Proposed amendment allows providers to inform patients of new contact information and their right to choose a provider (non-solicitation context)
- Legislature passed amendment on April 22nd; Governor Spanberger approved on May 14, 2026

Where Are We Now? – The Current State(s) of Enforcement

Maine (LD 2200)

- Bars non-competes for health care practitioners who do not have an ownership interest
- Health care practitioners are broadly defined (e.g., physicians, nurses, and other licensed providers)
- Requires acknowledgment of an individual's right to choose that individual's own health care practitioner
- Not retroactive; only impacts non-competes post-effective date (July 13, 2026)

Tennessee (HB 1034)

- Effective date – June 30, 2027 (prospective)
- Walks back from initial proposed full non-compete ban
- \$70K income threshold prior for enforceability
- Establishes rebuttable presumptions based on duration
- Employees & independent contractors:
 - Restraints of ≤ 2 years presumed reasonable
- Distributors, dealers, franchisees, lessees, licensees:
 - Presumption of reasonableness extends to ≤ 3 years
- Sale of business interests:
 - Restraints presumed reasonable for up to 5 years
 - Or duration of payment period, if longer

New Hampshire (SB 402)

- Signed by Gov. Ayotte on May 8, 2026
- Bans non-competes for physician associates
- Expands 2016 ban on physician noncompetes
- Applies to new contracts or contract renewals entered into on or after July 7, 2026 (60 days after signing)

Where Are We Now? – The Current State(s) of Enforcement

Rhode Island (SB 2160)

- Full noncompete ban
- Prospective; only impacts noncompetes after the effective date
- Currently pending

Illinois (HB 3213)

- Walks back from initial proposed full non-compete and customer non-solicit ban
- Currently only bans non-competes for employees earning less than \$300,000 annually and customer non-solicits for employees earning less than \$45,000
- Currently pending

Connecticut (RB 5492)

- Limits enforceability of non-competes to employees earning at least two times the minimum fair wage
- Voids non-competes for geographic areas in which the employee did not work or have material influence during the two years preceding the end of employment
- Voids non-competes if they applied to job duties the employee did not perform during the two years preceding the end of employment
- Currently pending



Key Takeaways

1. ***Even without a federal non-compete ban, restrictive covenants remain under scrutiny.***

Overbroad non-competes and non-solicit provisions continue to draw attention from the FTC and DOJ, particularly in sensitive sectors such as healthcare.

2. ***State-level regulation is expanding and increasingly fragmented.***

New and proposed state laws are creating a patchwork of rules involving wage thresholds, notice and timing requirements, and choice-of-law or forum restrictions. Multiple states are considering broader non-compete bans or industry-specific prohibitions.

3. ***Courts expect robust, proactive trade secret protection.***

Demonstrating reasonable efforts to maintain secrecy—and acting swiftly when misappropriation is suspected—is more critical than ever as courts closely examine the adequacy of such efforts and the factual basis for misappropriation claims.



State Law Focus: Delaware



State Law Focus: Delaware

Delaware Courts Signal a Shift on Post-Employment Restrictions

- The Delaware Supreme Court has established a definitive distinction between restrictive covenants that prohibit competition and forfeiture provisions that impose financial consequences on competition.
- Traditional restrictive covenants remain subject to the more rigorous judicial "reasonableness" review (geographic and temporal scope, advance legitimate business interests, balancing of equities)
- **Forfeiture-for-competition** provisions are generally exempt from such scrutiny under the "**employee choice doctrine**" (contractual restrictions enforced absent unconscionability, bad faith or other extraordinary circumstances)



State Law Focus: Delaware

Cantor Fitzgerald v. Ainslie (Del. 2024)

- Forfeitures in LP agreements are **NOT** restraints of trade; reasonableness review does not apply.
- "Parties have a right to enter into good and bad contracts; the law enforces both."
- Delaware now endorses the "**employee choice doctrine.**"
 - The doctrine assumes that an employee who voluntarily leaves a firm makes an informed decision:
 - They can either ***retain a contingent benefit*** by refraining from competition or ***forfeit that benefit*** to pursue competitive employment.
- **Key Rationale:** Because forfeiture provisions do not use the power of the court (injunctive relief) to stop a person from working, they do not "deprive the public of the employee's services" and thus do not trigger the same public policy concerns as traditional non-competes.



State Law Focus: Delaware

***LKQ Corp. v. Rutledge* (Del. 2024)**

- IL case with DE governing law.
- LKQ plant manager resigned and joined a competitor, forfeiting Restricted Stock Units (RSUs) under a clawback agreement.
- IL court applied “reasonableness” test.
- The 7th Circuit certified questions of law to the Del. S. Ct. asking if *Cantor Fitzgerald* was confined only to limited partnerships (e.g., sophisticated/high comp individuals):
 - what type of agreement the forfeiture provision appears in;
 - ***how sophisticated*** the parties are;
 - whether the parties ***retained counsel*** to review the provision;
 - whether the forfeiture involves a ***contingent payment or clawback***;
 - how far backward a clawback reaches;
 - whether the employee quit or was involuntarily terminated; or
 - whether the provision also entitled the company to injunctive relief



State Law Focus: Delaware

LKQ Corp. v. Rutledge (Del. 2024), cont'd

- Del. S. Ct. interpreted *Cantor Fitzgerald* **broadly**:
 - Not limited to partnership agreements or highly compensated individuals.
 - Applies to “middle managers” and clawback provisions.
- Court upheld three principles from *Cantor-Fitzgerald*:
 - 1) Employee Choice Doctrine applies only when ***the employee voluntarily resigns***.
 - 2) Forfeiture-for-competition provisions are ***conditions precedent***, not liquidated damages.
 - 3) Forfeiture-for-competition clauses are “***not enforceable through injunctive relief***. (distinct from non-competes)



State Law Focus: Delaware

***Fortiline, Inc. v. McCall* (Del. Ch./S. Ct. 2025)**

- Enforcing party sought to apply ***employee choice*** standard to R/C because *only seeking damages* (not PI)
- Chancery Ct. rejected that standard.
- Damages claims for breach of non-competes still trigger ***reasonableness*** review. (Del S. Ct. affirmed)
- "Seeking damages instead of injunctive relief does not change what [restrictive covenants] are . . . provisions at issue are R/Cs that prohibit an employee from competing . . . They therefore implicate public policy interests that call for reasonableness review."
- Held: Applying reasonableness review, Court struck the R/Cs as unreasonable and unenforceable.



State Law Focus: Delaware

N. Am. Fire v. Doorly (Del. S. Ct. 2026)

- Employee was given equity units in exchange for R/C.
- Employee surreptitiously set up a competing business and, when discovered, was fired for cause.
- Employee forfeited all vested and unvested equity as a result.
- Chancery Ct. dismissed company's breach of K claim holding that equity forfeiture eliminated sole consideration for the R/C.
- Del. S. Ct. reversed and remanded.
 - (1) Under DE law, consideration is assessed ***at time of formation***;
 - (2) Later forfeiture ***does not retroactively invalidate initial consideration***;
 - (3) ***Contingent equity awards*** are valid consideration for R/Cs (not illusory).



State Law Focus: Delaware

Payscale Inc. v. Norman (Del. 2026)

- Dispute involved R/Cs tied to equity incentives.
 - 18-month nationwide non-compete and non-solicit.
 - Payscale alleged former exec’s new role overlapped with prior duties.
 - Misused confidential information and client relationships for new employer’s benefit.
- Chancery Ct. denied TRO and dismissed complaint at pleading stage.
 - Found non-compete facially overbroad geographically and temporally.
 - Characterized breach allegations as “conclusory”.
- Del. S. Ct. reversed and remanded.
 - Lower court misapplied the “low pleading burden” required at motion to dismiss stage.
 - Chancery Ct. improperly drew adverse inferences against Payscale.



State Law Focus: Delaware

***Boingo Wireless, Inc. v. Georges* (Del. Ch. 2026)**

- R/C tied to sale of business
 - 5-year nationwide non-compete tied to \$14M sale of wireless infrastructure company.
 - Non-compete prohibited founder from competing in any of 39 states where the acquired business operated.
 - Broad non-solicit prohibited “encouraging” or “inducing” Boingo workers to leave and prohibited “disrupting” third-party relationships.
- Chancery Ct. held:
 - ***Non-compete upheld***
 - Applied more permissive standard for review in **sale-of-business** context.
 - Although non-compete was “aggressive,” court declined to invalidate it and was prepared to “blue pencil” overbroad terms.
 - ***Non-solicit struck as overbroad***
 - As written, non-solicit could “***capture non-competitive speech.***”
 - Court ***refused to blue pencil.***



Key Takeaways (Delaware)

1. ***Freedom of Contract vs. Restraint of Trade:***

Delaware courts prioritize freedom of contract, particularly among sophisticated actors. However, if a provision effectively prohibits an individual from pursuing their profession (subject to injunctive relief), it is a restraint of trade requiring ***reasonableness review***.

2. ***The Forfeiture Distinction.***

Provisions that allow an employer to withhold deferred benefits (like capital account distributions or restricted stock units) if a former employee competes are viewed as conditions precedent, not remedies for breach. These are generally enforceable regardless of their geographic or temporal scope.

3. ***Remedy Matters***

Seeking money damages for the breach of a promise not to compete does not transform a restrictive covenant into a forfeiture provision; it remains a restraint of trade subject to reasonableness review.

4. ***Consideration Timing***

The validity of consideration for these agreements is measured at the time of contract formation, not at the time of enforcement or breach.

Drafting Enforceable Alternatives

Non-Compete Alternatives

- **NDAs:** Limit definitions strictly to proprietary trade secrets, specific client data, and internal formulas.
- **Non-Solicits:** Restrict non-solicits exclusively to *current* customers and *active prospective clients* (with documented efforts) the employee directly managed.
- **The Risk:** The FTC treats overly broad NDAs and non-solicits as “*de facto* non-competes” if they function to prevent an individual from operating in the same industry.

Garden Leave / Fixed Term Agreements

- Use paid, on-payroll ***garden leave*** during employment where permitted; avoid post-separation paid restraints in prohibited jurisdictions.
- Keep fixed-term agreements genuine (no post-term restraint); pair with fair termination and severance mechanics.
- Always document legitimate interests and why narrower tools would not suffice.

Forfeiture-for-Competition Provisions

- Drafting matters: contract documents should clearly state that the equity award itself, independent of future vesting or forfeiture, constitutes consideration.
- Restrictive covenants now face ***heightened scrutiny*** for reasonableness in scope, duration, and geography.
- As the legal landscape evolves, alternatives such as forfeiture-for-competition provisions may offer a more effective path.



The 90-Day Employer Action Plan

- **Inventory & Retire:** Retire one-size-fits-all forms, but catalogue any prior versions deployed to existing and former employees.
- **Adopt Modular Agreements:** Adopt modular, state-specific templates with embedded notices and thresholds (“plug-and-play”).
- **Audit NDAs:** Review provisions for all-encompassing definitions or provisions with broad prohibitions. Pay special attention to duration and geographic scope.
- **Define Legitimate Interests:** Outline the legitimate interests tied to specific roles and territories (specific trade secrets, defined goodwill).
- **Secure Operations:** Technology alone is insufficient; policies without enforcement lack defensibility. Effective management requires Legal, HR, IT, and Security coordination, with measurable standards.

thank you

Jesse Coleman

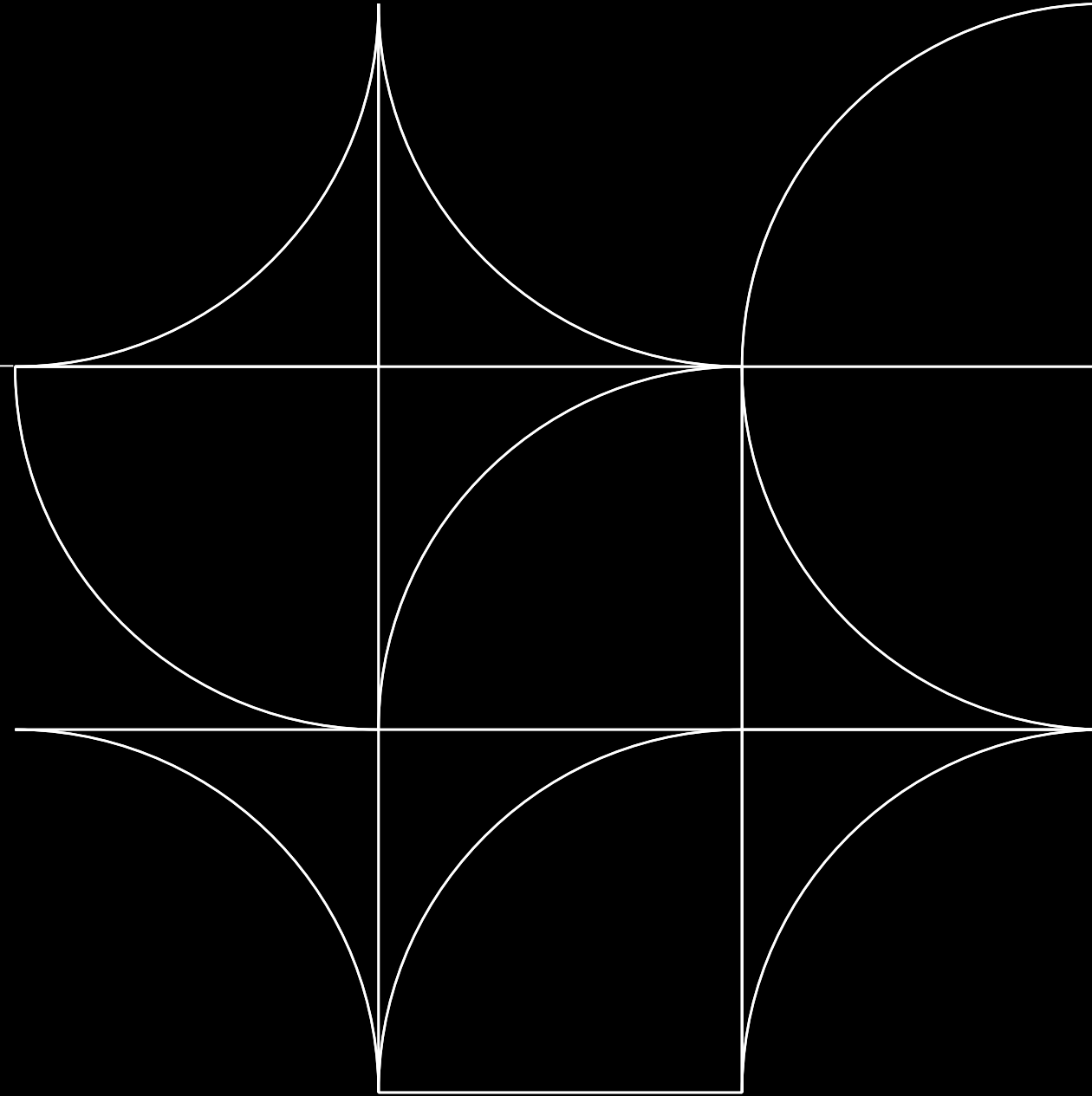
Email: jmcoleman@seyfarth.com

Gary Friedman

Email: gfriedman@seyfarth.com

Eron Reid

Email: ereid@seyfarth.com



CLE ATTENDANCE VERIFICATION FORM



Please scan the QR code to complete the digital attendance verification form to receive CLE credit for this program.

QR code directs you to our electronic form which can also be found in the calendar invite that was sent to you for this program.

You will need:

1. **Title:** Webinar - FTC Non-Compete Ban Two Years Later: Enforcement & Workarounds
2. **Date Viewed:** May 28, 2026
3. **Attendance Verification Code:** SS3800

State-specific CLE credit information can be found in the form.