



50 State

DESKTOP REFERENCE

What Employers Need To Know
About Non-Compete and
Trade Secrets Law

2016-2017 EDITION

Dear Clients and Friends,

We are pleased to provide you with the 2016–2017 edition of our *50 State Desktop Reference: What Employers Need to Know about Non-Compete and Trade Secrets Law*. 2016 was an extraordinary year in that in May 2016 the Defend Trade Secrets Act (DTSA) was ushered into law, and there is now a federal cause of action for trade secrets misappropriation. Some states passed legislation further narrowing the use of non-compete agreements, and both federal and state regulators increased their scrutiny of such agreements in certain contexts. We expect over the next year, law will trickle out regarding the DTSA's application, limitations, benefits and interpretation with regard to the immunity provisions. No doubt, there will continue to exist a variety of statutes and case law across the country when it comes to employee non-competition and non-solicitation agreements, as well as the protection of proprietary information.

As we have said in the past, and continues to hold true today, any company that seeks to use non-competition and non-solicitation agreements to protect its trade secrets, confidential information, client relationships, goodwill or work force needs to stay informed of the varied and ever-evolving standards in each state. This one-stop desk reference surveying many of the questions related to the use of employee covenants and intellectual capital protection in all 50 states provides a starting point for the HR professional, in-house counsel, or company executive to answer your questions about protecting your company's most valuable and confidential assets. Of course, the information contained in the booklet is understandably condensed and simplified, and thus, while it provides a convenient point of reference, always consult with your attorney before making any decisions as the law is constantly changing.

The breadth of information that we've included in this booklet complements our attorneys' impressive knowledge when it comes to non-competition, non-solicitation and trade secret issues across the United States and abroad. As leaders in this field, demonstrated by our recent "Top Tier" ranking in the 2016 edition of *The Legal 500* United States, the attorneys of Seyfarth Shaw's Trade Secrets, Non-Compete, and Computer Fraud practice group provide a variety of client-focused services, ranging from counseling and transactional deal advice to trade secret audits to cost-effective injunctions and litigation.

Remaining abreast of developments is also one of our top priorities. We invite you to visit our award-winning blog at www.tradesecretslaw.com for commentary and analysis on hot new topics in the world of trade secret, non-compete, unfair competition, computer fraud law, privacy and social media, including significant legislative and case updates. Our practice group's extensive webinar series serves as another source for up-to-date information on a variety of interesting topics. Visit our blog to playback previous [podcasts](#) or [webinar recordings](#). We invite you to join in on these webinars (a list of upcoming webinars is listed in the booklet). Seyfarth Shaw is able to offer CLE credit in certain states. We hope this booklet proves a useful and informative tool. Please do not hesitate to contact your Seyfarth attorney if you have any questions.



Michael Wexler

A handwritten signature in black ink, appearing to read "Michael Wexler".

Chicago Partner and
Practice Group Chair



Robert Milligan

A handwritten signature in black ink, appearing to read "Robert Milligan".

Los Angeles Partner and
Practice Co-Chair

State	Are employee non-competes allowable?	State statutes governing employee non-competes	Are employee non-solicitation agreements allowable?	Are customer non-solicitation agreements allowable?	Continued employment sufficient consideration?
Alabama	Yes	Ala. Code §8-1-190	Yes	Yes	Yes (May not be signed prior to employment)
Alaska	Yes	None	Not yet decided	Yes	Not yet decided
Arizona	Yes	None	Yes	Yes	Yes
Arkansas	Yes	Ark. Code Ann. § 4-70-207	Likely, yes	Yes	Yes
California	No (with narrow exceptions)	Cal. Bus. and Prof. Code §16600, 16601, 16602, and 16602.5	Yes	Not typically but there may be a trade secret exception	Likely, yes
Colorado	Yes	Colo. Rev. Stat. §8-2-113	Yes	Yes	Yes
Connecticut	Yes	None	Not yet decided	Yes	Likely, yes
Delaware	Yes	No	Yes	Yes	Yes
Dist. of Columbia	Yes	No	Yes	Yes	Likely, yes
Florida	Yes	Fla. Stat. Ann. §542.335	Yes	Yes	Yes, where expressly identified
Georgia	Yes, but ability to enforce restriction varies based on when the agreement was signed; post-5/10/11 much easier to enforce	O.C.G.A. §13- 8-50 et seq.	Yes	Yes (for all periods)	Yes (for all periods)
Hawaii	Yes	Haw. Rev. Stat. §480(c)	Unclear	Yes	Not yet decided
Idaho	Yes	Idaho Code §§44-2701 to -2704	Not yet decided	Yes	Yes
Illinois	Yes	None	Yes	Yes	Yes, may depend on the length of employment (At least 2 years, questioned by Federal Court)

State	Blue penciling or reformation permissible?	Enforceable against discharged employees?	Adopted the UTSA?	Applicable statute of limitations (UTSA and breach of contract)	Adopted inevitable disclosure doctrine?	Restrictive covenants extended for violation?
Alabama	Blue pencil and reformation	Never specifically addressed but likely yes	Ala. Code. §8-27-1	2 years (ATSA) 6 years (breach of contract)	Not yet decided	Yes
Alaska	Reformation	Not yet decided	Ala. Stat. §45.50.910	3 years (ATSA) 3 years (breach of contract)	Not yet decided	Not yet decided
Arizona	Blue pencil	Unclear	Ariz. Rev. Stat. Ann. §§44-401 to 44-407	3 years (AUTSA) 6 years (breach of contract)	Not yet decided	Unclear
Arkansas	Reformation	Undecided	Ark. Stat. Ann. §4-75-601	3 years (ATSA) 5 years (breach of contract)	Yes	No
California	No, in employment context; blue pencil with respect to narrow exceptions	No, with respect to non-competes; yes, with respect to non-solicitation	Cal. Civ. Code §3426	3 years (CUTSA) 4 years (breach of contract)	No	Not yet decided
Colorado	Blue pencil	Not yet decided	Col. Rev. Stat. §7-74-101	3 years (CUTSA) 6 years (breach of contract)	Not yet decided	No
Connecticut	Blue pencil	Yes	Conn. Genl. Stat. §35-50	3 years (CTSA) 6 years (breach of contract)	Yes, but only when the employee was bound by a non-compete	No
Delaware	Reformation	Yes	Del. Code Ann. Title 6 §2001	3 years (DTSA) 3 years (breach of contract)	Yes	Yes
Dist. of Columbia	Unclear	No	D.C. Code Ann. §48-501	3 years (DUTSA) 3 years (breach of contract)	Not yet decided	Yes
Florida	Reformation	Yes	Fla. Stat Ann. §688.001	3 years (FUTSA) 5 years (breach of contract)	Yes	Unclear
Georgia	Varies based on when the agreement was signed (pre-11/3/10, blue pencil; post-5/10/11, reformation)	Varies based on when the agreement was signed (pre-11/3/10, discharge suggests that the covenant should not be enforced; post-5/10/11, unclear)	O.C.G.A. §10-1-760 et seq.	5 years (GUTSA) 6 years (breach of contract)	No	No
Hawaii	Reformation	Not yet decided	Haw. Rev. Stat. §482B-1	3 years (trade secret act) 6 years (breach of contract)	Not yet decided	Unclear
Idaho	Blue pencil	Yes	Idaho Code §48-801	3 years (ITSA) 5 years (breach of contract)	Not yet decided	Unclear
Illinois	Reformation	No, if without cause; unclear with cause	765 ILCS 1065	5 years (ITSA) 10 years (breach of contract)	Yes	Generally, no

State	Are employee non-competes allowable?	State statutes governing employee non-competes	Are employee non-solicitation agreements allowable?	Are customer non-solicitation agreements allowable?	Continued employment sufficient consideration?
Indiana	Yes	None	Yes	Yes	Yes
Iowa	Yes	None	Yes	Yes	Yes
Kansas	Yes	None	Not yet decided	Yes	Yes
Kentucky	Yes	None	Yes	Yes	No
Louisiana	Yes	La. Rev. Stat. Ann. §23:921	Yes	Yes	Yes
Maine	Yes	None	Not yet decided	Yes	Yes
Maryland	Yes	None	Yes	Yes	Yes
Massachusetts	Yes	None	Yes	Yes	Yes
Michigan	Yes	Mich. Comp. Laws §445.774a	Yes	Yes	Yes
Minnesota	Yes	None	Yes	Yes	No
Mississippi	Yes	None	Yes	Yes	Yes
Missouri	Yes	Mo. Stat. Ann. §431.202	Yes	Yes	Yes, if combined with something else (such as access to confidential information)
Montana	Yes	Mont. Code Ann. §§28-2-703 to -705	Yes	Yes	Yes
Nebraska	Yes	None	Not yet decided	Yes	Yes
Nevada	Yes	Nev. Rev. Stat. §613.200	Yes	Yes	Yes
New Hampshire	Yes	NH RSA 275:70 (notice requirement)	Not yet decided	Yes	Yes

State	Blue penciling or reformation permissible?	Enforceable against discharged employees?	Adopted the UTSA?	Applicable statute of limitations (UTSA and breach of contract)	Adopted inevitable disclosure doctrine?	Restrictive covenants extended for violation?
Indiana	Blue pencil	Yes	Ind. Code Ann. §24-3-1	3 years (IUTSA) 10 years (breach of contract)	Generally, no	Possibly, where contract permits extension
Iowa	Blue pencil	Yes	Iowa Code §550.1	3 years (IUTSA) 10 years (breach of contract)	Yes	Yes
Kansas	Reformation	Yes	Kan. Stat. Ann. §60-3320	3 years (KUTSA) 5 years (breach of contract)	Not yet decided but likely, yes	Yes, where contract permits extension
Kentucky	Reformation	Not yet decided	Ky. R.S. §365.880	3 years (KTSA) 15 years (breach of contract)	Not yet decided but likely, no	Yes
Louisiana	Blue pencil	Yes	La. Rev. Stat. Ann. §51:1431	3 years (trade secret act) 10 years (breach of contract)	No	No
Maine	Reformation	Likely, yes	M.R.S.A. Title 10 §1541 et seq	4 years (trade secret act) 6 years (breach of contract)	Not yet decided	Not yet decided
Maryland	Blue pencil	Generally, no	Md. Com. L. Code §11-1201	3 years (MUTSA) 3 years (breach of contract)	No	No
Massachusetts	Reformation	Yes	No	3 years (Mass. Gen. Laws ch. 260 §2A) 6 years (breach of contract)	Yes in federal court; state courts have recognized its existence but have not adopted it	Generally, no
Michigan	Reformation	Yes	M.C.L.A. §445.1901 to 445.1910	3 years (MUTSA) 6 years (breach of contract)	No	Yes
Minnesota	Blue pencil	Yes	Minn. Stat Ann. §325C.01	3 years (MUTSA) 6 years (breach of contract)	Not explicitly accepted but likely, yes	Very rarely
Mississippi	Reformation	Yes	M.C.A. §75-26-1	3 years (MUTSA) 3 years (breach of contract)	Not yet decided	No
Missouri	Reformation	Judicial discretion	Mo. Stat. §417.450 to 417.467	5 years (MUTSA) 5 years (breach of contract)	Unclear	No
Montana	Not yet decided in the employment context	Generally, no	Mont. Code Ann. §30-14-401	3 years (MUTSA) 8 years (breach of contract)	Not yet decided	Not yet decided
Nebraska	No	Not yet decided	Neb. Rev. Stat. §87-501	4 years (NTSA) 5 years (breach of contract)	Not yet decided	Not clear
Nevada	Reformation	Not yet decided	Nev. Rev. Stat. §600A.010	3 years (trade secret act) 6 years (breach of contract)	Not yet decided	Yes
New Hampshire	Reformation	Not yet decided	N.H. R.S.A. §350-B:1	3 years (NHUTSA) 3 years (breach of contract)	Not yet decided	No

State	Are employee non-competes allowable?	State statutes governing employee non-competes	Are employee non-solicitation agreements allowable?	Are customer non-solicitation agreements allowable?	Continued employment sufficient consideration?
New Jersey	Yes	None	Yes	Yes	Yes
New Mexico	Yes	None	Not yet decided	Yes	Likely, yes but not yet explicitly addressed
New York	Yes	None	Yes	Yes	Yes
North Carolina	Yes	N.C. Gen. Stat. §75-4	Yes	Yes	No
North Dakota	No	N.D. Cent. Code §9-08-06	No	No	No, but yes with respect to non-disclosure agreements
Ohio	Yes	Ohio Rev. Code Ann. §1313.02	Yes	Yes	Yes
Oklahoma	No	Okla. Stat. tit. 15, §219A	Yes	Yes	Not yet decided
Oregon	Yes (some limitations)	Or. Rev. Stat. §653.295 (notice requirement)	Yes	Yes	No
Pennsylvania	Yes	No	Yes	Yes	No
Rhode Island	Yes	No	Not yet decided	Yes	Yes per Superior Court; undecided by RI Supreme Court
South Carolina	Yes	No	Yes	Yes	No
South Dakota	Yes	S.D. Codified Laws §53-9-8	Yes	Yes	Yes
Tennessee	Yes	None	Yes	Yes	Yes
Texas	Yes	Tex. Bus. & Com. Code §15.50-.52	Yes	Yes	No
Utah	Yes	UT Code Ann. § 34-51-101	Not yet decided	Yes	Yes
Vermont	Yes	None	Not yet decided	Yes	Yes

State	Blue penciling or reformation permissible?	Enforceable against discharged employees?	Adopted the UTSA?	Applicable statute of limitations (UTSA and breach of contract)	Adopted inevitable disclosure doctrine?	Restrictive covenants extended for violation?
New Jersey	Reformation	Yes	N.J.S.A. 56:15-1, et seq.	3 years (NJUTSA) 6 years (breach of contract)	Yes	No
New Mexico	Likely, yes	Undecided	N.M. Stat. Ann. §57-3A-1	3 years (NMUTSA) 6 years (breach of contract)	Not yet decided	No
New York	Reformation	Yes, only with cause	No	3 years (tort) 6 years (breach of contract)	More likely to be accepted in federal than state court	Within discretion of the Court
North Carolina	Blue pencil	Likely	N.C. Gen. Stat. §66-152	3 years (NCTSPA) 3 years (breach of contract)	Not yet decided	Generally, no
North Dakota	Reformation	Not applicable	N.D. Cent. Code §47-25.1-01	3 years (NDUTSA) 6 years (breach of contract)	Not yet decided	Not applicable
Ohio	Reformation	Yes	R.C.Secs. 1333.61	4 years (OUTSA) 8 years (breach of contract)	Considered but not adopted	Yes
Oklahoma	No	Yes	Okla. Stat. tit. 78, § 85	3 years (OUTSA) 5 years (breach of written contract) 3 years (oral/implied)	Not yet decided	No
Oregon	Reformation	Not yet decided	Or. Rev. Stat. §646.461	3 years (OUTSA) 6 years (breach of contract)	Not yet decided	No
Pennsylvania	Reformation	Yes per lower courts; undecided by PA Supreme Court	12 Pa. Cons. Stats §5392	3 years (PUTSA) 4 years (breach of contract)	Not yet decided, but superior courts have treated the idea favorably	No
Rhode Island	Blue pencil normally; reformation rarely	Not yet decided	R.I. Gen. Laws §6-41-1	3 years (RIUTSA) 10 years (breach of contract)	Not yet decided	Yes
South Carolina	Strikethrough, no reformation	Undecided	S.C.C.A. §39-8-10 et seq.	3 years (SCUTSA) 3 years (breach of contract)	Not yet decided	Not yet decided
South Dakota	Blue pencil	Yes	S.D. Cod. Laws §37-29-1	3 years (SDUTSA) 6 years (breach of contract)	Not yet decided	Not yet decided
Tennessee	Reformation	Unclear	Tenn. Code §47-25-1701	3 years (trade secret act) 6 years (breach of contract)	Not yet decided	Unclear
Texas	Reformation	Yes	Yes, effective 9/1/13	3 years (Tex Civ. Prac. & Rem. Code Ann. §16.010) 4 years (breach of contract)	Not adopted but not rejected	Rarely
Utah	Not yet decided	Yes	Utah Code Ann. §13-24-1	3 years (UUTSA) 6 years (breach of contract)	Yes	Not yet decided
Vermont	Unclear	Yes	Ch. 143 §4601	3 years (VTSA) 6 years (breach of contract)	Not yet decided	No

State	Are employee non-competes allowable?	State statutes governing employee non-competes	Are employee non-solicitation agreements allowable?	Are customer non-solicitation agreements allowable?	Continued employment sufficient consideration?
Virginia	Yes	None	Yes	Yes	Yes
Washington	Yes	None	Not yet decided	Yes	No
West Virginia	Yes	None	Not yet decided	Maybe	No
Wisconsin	Yes	Wiss. Stat. Ann. §103.465	Yes	Yes	No
Wyoming	Yes	None	Not yet decided	Yes	No

2016 webinar topics by month:

January: 2015 National Year in Review: What You Need to Know About the Recent Cases/ Developments in Trade Secrets, Non-Compete, and Computer Fraud in Trade Secrets, Non-Compete, and Computer Fraud

February: Data Security and Trade Secret Protection for Lawyers

March: New Year, New Progress: 2016 Update on Defend Trade Secrets Act & EU Directive

April: Protecting Confidential Information and Client Relationships in the Financial Services Industry

May: Trade Secrets, Restrictive Covenants and the NLRB: Can They Peacefully Coexist?

Also in May: The Defend Trade Secrets Act: What Employers Should Know Now

June: Enforcing Trade Secret and Non-Compete Provisions in Franchise Agreements

July: International Trade Secret and Non-Compete Legal Update

October: The Intersection of Trade Secrets Violations and Criminal Law

Also in October: Trade Secret Protection and Audits

November: Proving-Up Trade Secret Misappropriation: Best Practices and Tales From the Trenches that Every Company Should Know

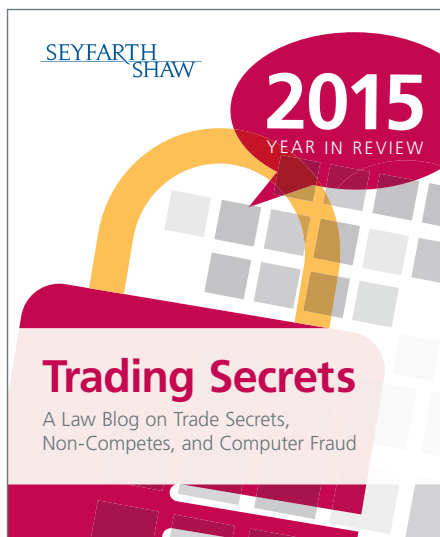
December: Open Source Software as a Security Risk

Recordings of all past webinars are available on our blog at www.tradesecretslaw.com/Webinars.

For registration and more upcoming events please visit our events page: www.seyfarth.com/Seyfarth-Events.

This Desktop Reference should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are 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. Additionally, this Desktop Reference is not an offer to perform legal services nor establishes an attorney-client relationship.

State	Blue penciling or reformation permissible?	Enforceable against discharged employees?	Adopted the UTSA?	Applicable statute of limitations (UTSA and breach of contract)	Adopted inevitable disclosure doctrine?	Restrictive covenants extended for violation?
Virginia	No	Yes	Va. Code. Ann. §59.1-336	3 years (VUTSA) 5 years (breach of contract)	No	Yes
Washington	Reformation	Yes	Wash. Rev. Code §19.108.011 to .940	3 years (WUTSA) 3 years (breach of contract)	Unclear	Unclear
West Virginia	Reformation	Not yet decided	W. Va. Code §47-22-1	3 years (WVUTSA) 10 years (breach of contract)	Not yet decided	No
Wisconsin	Not likely	Undecided	Wis. Stat. §134.90	3 years (WUTSA) 6 years (breach of contract)	Not yet decided	Not yet decided
Wyoming	Reformation	Yes	Wyo. Stat. §§40-24-101 to 110	4 years (WUTSA) 10 years (breach of contract)	Not yet decided	Unclear



Year in Review Book

Trade Secrets Blog

<http://www.tradesecretslaw.com/>

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