

JUNE 12-13, 2017

NON-COMPETES UNDER ATTACK

*TRENDS IN RESTRICTIVE
COVENANT ENFORCEMENT AND
RELATED DRAFTING
CONSIDERATIONS*

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AGENDA

- I. “Jimmy John’s Rebellion” and Resulting Barriers to Non-Compete Enforcement
 - A. Recent Legislative Efforts in the States
 - B. California’s Statutory Limitation on Choice-of-Law and Forum Selection Provisions
- II. Recent DOJ and FTC Antitrust Guidance
- III. Will Texas Follow the National Trend?
- IV. Drafting and Enforcement Considerations in an Age of Increased Scrutiny

INCREASED SCRUTINY OF RESTRICTIVE COVENANTS: WHITE HOUSE HOSTILITY TO NON-COMPETES



"THE JIMMY JOHN'S REBELLION"



INCREASED STATE HOSTILITY TO NON-COMPETES



New Insight on Alabama's Restrictive Covenants Statute

**What Employers Should Know About New
Ill. Noncompete Law**

The New York Times

**How Noncompete Clauses
Keep Workers Locked In**

Deseret News Utah

**Utah lawmakers pass
controversial bill on
noncompete contracts**

Forbes

California Got It Right: Ban The Non-Compete Agreements



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RESULTING BARRIERS TO NON-COMPETE ENFORCEMENT

- New York and Illinois investigations and settlements
- Recent state efforts
 - Statutory limitations on non-compete length
 - Wage thresholds
 - Consideration in addition to continued employment
 - Advance notice requirements
 - Occupation-specific limitations
- California's statutory limitation of choice-of-law and forum selection provisions



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