

## 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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Also available as part of the eCourse

[2017 Labor and Employment Law eConference](#)

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24<sup>th</sup> Annual Labor and Employment Law Conference session  
"Non-Competes Under Attack"