

Senators propose near-total ban on worker noncompete agreements

Enlarge / “We heard from people working at pizza parlors” being asked to sign noncompete agreements, a Massachusetts state legislator told Ars last year.

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A bipartisan pair of senators has introduced legislation to drastically limit the use of noncompete agreements across the US economy.

“Noncompete agreements stifle wage growth, career advancement, innovation, and business creation,” argued Sen. Todd Young (R-Ind.) in a Thursday press release. He said that the legislation, co-sponsored with Sen. Chris Murphy (D-Conn.), would “empower our workers and entrepreneurs so they can freely apply their talents where their skills are in greatest demand.”

Noncompete agreements ban workers from performing similar work at competing firms for a limited period—often one or two years. These agreements have become widely used in recent decades—and not just for employees with sensitive business intelligence or client relationships.

“We heard from people working at pizza parlors, yogurt shops, hairdressers, and people making sandwiches,” Massachusetts

state Rep. Lori Ehrlich told us in an interview last year.

Ehrlich was the author of 2018 Massachusetts legislation limiting the enforcement of noncompete agreements. Several other states—including Oregon, Illinois, and Maryland—have passed bills on the subject.

These state reforms focused on reining in the worst abuses of noncompete agreements. Some prohibit the use of noncompete clauses with low-wage workers. Others require employers to give employees notice of the requirement at the time they make a job offer.

The Young and Murphy bill goes much further, completely banning noncompete agreements outside of a few narrow circumstances—like someone selling their own business.

California suggests a near-total ban could work well

If debates in Massachusetts and elsewhere are any indication, we can expect business interests to lobby hard against such a sweeping proposal. Some business groups argue that noncompete agreements give companies incentives to invest in worker training—without having to worry that workers will take their new skills to another employer.

But supporters of broader reforms have a powerful counterexample: California. For decades, the Golden State has had the nation's strictest laws against noncompetes, effectively banning the practice. Despite that—or maybe because of it—the state has become a powerful center for high-tech innovation.

In an influential 1994 book, political scientist AnnaLee Saxenian argued that a key factor in Silicon Valley's economic success over the previous decades was the fact that employees could hop from job to job, taking their valuable skills with

them. That freewheeling culture helped good ideas developed at one company to quickly spread elsewhere, ultimately benefitting the entire regional economy.

The lack of noncompetes is a boon to entrepreneurship in California. Many Silicon Valley technology companies were started by engineers who had great ideas but couldn't get their big-company employers to take them seriously. California law ensures that workers in this situation have the option to quit and pursue their idea independently.

At least one leading presidential candidate, Sen. Elizabeth Warren (D-Mass.), is interested in this issue. Last year, Warren co-sponsored a noncompete reform bill with Murphy and Sen. Ron Wyden (D-Ore.). So expect this issue to get attention in the next few years if Warren captures the Democratic nomination and the presidency.

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