

Research concluding noncompetes stifle workers forthcoming in multiple publications

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In recent years, debate has been intensifying over whether the noncompete agreements some companies use to bind employees help or hurt workers. It's an issue management professor Evan Starr at the

University of Maryland's Robert H. Smith School of Business has studied extensively—co-authoring four research papers on the topic forthcoming in top journals. All the results point to the same conclusion: Noncompetes stifle workers.

The findings will be published as "Low Wage Workers and the Enforceability of Non-compete Agreements" in *Management Science*, "Locked In? The Enforceability of Covenants Not to Compete and the Careers of High-Tech Workers" in the *Journal of Human Resources*, "The Behavioral Effects of (Unenforceable) Contracts" in the *Journal of Law, Economics, and Organization*, and "Noncompete Agreements in the U.S. Labor Force" in the *Journal of Law and Economics*.

The latter, says Starr, represents the most sweeping work and is the first systematic investigation of noncompetes in the United States. In it, he studies a nationally representative sample, looking at all sorts of workers. One of the key findings: Noncompetes are found even among [low-wage workers](#). "There have been anecdotes of that fact, but this is the first systematic evidence," says Starr. "This is shocking because when you think about noncompetes, you think about tech workers and executives—you're not thinking about doggie-daycare sitters or hairstylists or yoga instructors, but that's the modal [worker](#) that's bound by a noncompete. Our paper launches from that fact, and the key question for policymakers is this a good or a bad thing?"

"The argument for why they are bad is pretty clear," Starr says. Take the case of the low-wage worker, earning \$12 an hour, who gets a better offer at a competitor to make \$15 an hour. "A noncompete could prevent them from making those sorts of moves that are going to enhance their social and economic mobility."

So how do companies justify using these restrictions? Starr says past research argues that noncompetes give firms incentive to invest in

workers to develop their skills and knowledge to make them more productive, and that boost will help the individual workers make more money than they could have otherwise.

"All states in the U.S. that enforce noncompete agreements require that workers have some sort of 'protectable,' legitimate interest, which is exactly this sort of investment: That you're giving workers trade secrets or very specialized training."

Policymakers have taken up the issue. In late 2019, Starr testified about the use of noncompetes before the U.S. House of Representatives and the U.S. Senate. Even earlier, in 2016, the U.S. Treasury and the Obama Administration used Starr's findings as the basis of related reports, spurring states to reexamine noncompete policies. In the past two years, some—including Maryland, Virginia, and Washington DC—have moved to ban noncompetes for low-wage earners. But Oregon was the trailblazer, doing so back in 2008, making it the perfect case study for Starr (in the forthcoming in *Management Science* paper), with co-author Michael Lipsitz, an economist for the Federal Trade Commission.

The Oregon law banned noncompete agreements for all hourly workers and for workers earning below the median income for a family of four in the United States. It also banned noncompetes for certain occupations.

"We looked broadly at hourly workers, because hourly workers comprise 67% of working population in Oregon, and it was very clear in the bill that all noncompetes are banned for hourly workers," Starr says.

The findings were clear: Low-wage workers benefited from the ban, earning higher wages and changing jobs more. On average, hourly workers' wages grew by 6% five years after the ban. The positive wage effects were across the board, in all age groups and education levels. The researchers also found that workers' job-to-job mobility rose by 17%

overall, with 79% of this increase in mobility driven by an increase in moves within an industry—"exactly the kinds of moves that a noncompete would prohibit," Starr says.

The findings show that not only are workers moving to new jobs within their industries, they are also moving up to better jobs. And while men benefit from this ban on noncompetes, women benefit almost twice as much, suggesting that noncompetes were holding down the earnings of low-income women more than men, Starr says. "It could be that women are less likely to negotiate over these sorts of provisions, and so they are harmed more when these are being enforced."

The researchers analyzed how companies responded to the noncompete ban and found that there was no impact on hours worked, so firms are still employing workers, on average, for the same amount of time. "What that means is workers' take-home pay ultimately goes up—hourly wage increases translate into actual earnings increases," Starr says.

They also looked at whether firms changed compensation structures in response to the new law, because Oregon only banned noncompetes for hourly workers and those who make less than the median household income for a family of four. They find that workers earning just above that threshold were more likely to become salaried. "One perk of the structure of this bill is to get workers into more stable situations, even if they are still using noncompetes with them," Starr says.

"Despite good arguments for noncompetes potentially benefiting workers, the evidence just doesn't support that claim. The evidence suggests that these are bad for low-wage workers."

Paralleling the Oregon study, Starr's research for the *Journal of Human Resources* looks at a 2015 Hawaii law that banned noncompetes in the high-tech industry. His findings are the same. "After Hawaii banned

noncompetes for tech workers, their wages rise, their job mobility rises. It's basically the same story but in a very different set of occupations, where arguments about the investment effects of noncompetes seem more plausible."

And, the work in the *Journal of Law, Economics and Organization* looks at the influence of per se unenforceable noncompete agreements. "We find that they still do matter, in fact to a similar degree as in states where they are totally enforceable. We look at why that is and find evidence that workers are proactively turning down jobs, not because of the law, but because they are scared of a lawsuit."

Collectively, Starr's papers show that workers do better without noncompete agreements. But what about firms?

Firms may be less profitable if they have to pay workers more, Starr says, but there's definitely a benefit for them too: Without noncompetes, firms have unfettered access to the labor market and can hire the workers they want to hire, including those from a competitor. "It's not really a firm versus worker issue. It could be a win for both workers and firms."

More information: Michael Lipsitz et al, Low-Wage Workers and the Enforceability of Non-Compete Agreements, *SSRN Electronic Journal* (2019). [DOI: 10.2139/ssrn.3452240](https://doi.org/10.2139/ssrn.3452240)

Evan Starr et al. Noncompetes in the U.S. Labor Force, *SSRN Electronic Journal* (2018). [DOI: 10.2139/ssrn.2625714](https://doi.org/10.2139/ssrn.2625714)

Evan Starr et al. Noncompetes and Employee Mobility, *SSRN Electronic Journal* (2018). [DOI: 10.2139/ssrn.2858637](https://doi.org/10.2139/ssrn.2858637)

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