

# Reasonable Boundaries and Legal Regulation of Non-Compete Agreements: Balancing Trade Secret Protection and Employees' Freedom of Employment

**Zeran Shen**

Anhui University of Finance and Economics, Bengbu, Anhui 233000, China.

**How to cite this paper:** Shen, Z. R. (2026). Reasonable boundaries and legal regulation of non-compete agreements: Balancing trade secret protection and employees' freedom of employment. *Law and Humanities*, 2(2), 59–70. ISSN Print: 3079-5117, ISSN Online: 3079-5125.  
<https://doi.org/10.63313/LH.9046>

**Published:** 2026-05-25

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## Abstract

Non-compete agreements are based on the protection of trade secrets and related confidential matters, but their enforcement directly affects employees' post-employment choices. This paper examines the historical development, regulatory structure, and practical controversies of non-compete agreements, focusing on applicable personnel, confidential matters, scope of restrictions, economic compensation, and liability for breach. The study finds that China has developed a statutory and judicial framework for non-compete agreements, but problems remain in high-tech industries, platform-based employment, and the judicial adjustment of liquidated damages. These problems include overly broad application to employees, excessive restriction of post-employment activities, and imbalance between economic compensation and liability. Improvement should focus on the correspondence among confidential matters, applicable personnel, scope of restrictions, economic compensation, and liability. Courts should refine the review of applicable personnel, require employers to explain the connection between confidential matters and restrictive terms, and develop more stable rules for compensation and liquidated damages. In this way, non-compete clauses can remain tools for protecting trade secrets rather than contractual devices that restrict employee mobility.

## Keywords

Non-Compete Agreements; Trade Secrets; Employee Mobility; Economic Compensation; Reasonableness Review

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## 1. Introduction

After the implementation of the Labor Contract Law of the People's Republic of China (hereinafter referred to as the Labor Contract Law) in 2008, non-compete clauses began to be expressly regulated within China's labor contract system. Article 23 of the Labor Contract Law provides that employers and employees may agree on matters concerning the protection of trade secrets and confidential matters related

to intellectual property rights. For employees subject to confidentiality obligations, employers may include non-compete clauses in employment contracts or confidentiality agreements, and agree to provide monthly economic compensation during the non-compete period after the rescission or termination of the employment contract. If an employee violates the non-compete agreement, the employee shall pay liquidated damages as agreed. Article 24 further limits the applicable personnel to senior managers, senior technical personnel, and other employees subject to confidentiality obligations. It also provides that the scope, geographical area, and duration of the non-compete restriction shall be agreed upon by the parties, but shall not violate laws or regulations, and that the post-employment non-compete period shall not exceed two years. Article 25 provides that, except for circumstances involving service periods and non-compete restrictions, employers may not agree with employees that employees shall bear liquidated damages.

The Interpretation (I) of the Supreme People's Court on Issues Concerning the Application of Law in the Trial of Labor Dispute Cases (hereinafter referred to as the Interpretation (I) on Labor Dispute Cases), promulgated in 2020 and implemented in 2021, further clarifies the rules on economic compensation. Articles 36 through 40 address the compensation standard where no economic compensation has been agreed upon, the performance of non-compete obligations after compensation has been agreed upon, the employee's right to terminate the non-compete agreement if the employer fails to pay compensation for three months, additional compensation where the employer terminates the non-compete agreement, and whether the employee must continue to perform the non-compete obligation after paying liquidated damages. The Interpretation (II) of the Supreme People's Court on Issues Concerning the Application of Law in the Trial of Labor Dispute Cases (hereinafter referred to as the Interpretation (II) on Labor Dispute Cases), issued in 2025, further focuses on substantive review. Articles 13 and 15 are particularly relevant to post-employment non-compete disputes, while Article 14 concerns in-term non-compete clauses. These rules show that the regulation of non-compete clauses has moved from recognizing contractual arrangements and refining compensation rules toward reviewing substantive reasonableness.

Enterprises have practical reasons for using non-compete clauses. Technical solutions, customer information, operational data, algorithmic models, and supply chain arrangements are often connected with employees' job responsibilities and work-related access. When key personnel leave to join competing entities, the former employer may face risks concerning the protection of trade secrets. However, non-compete clauses should not be treated as a general tool for retaining employees. They restrict specific competitive conduct rather than general employment choices; the basis for such restrictions is not an abstract market advantage, but trade secrets or confidential matters related to intellectual property rights [1].

In recent years, disputes have increasingly arisen in the internet, high-tech, and platform-based employment sectors. Some agreements do not specify whether a position involves access to confidential information, nor do they explain the relationship between the scope of the restriction and the confidential matters at issue. Instead, they rely on broad lists of competing entities, extended restriction periods, and high liquidated damages to limit employees' post-employment options. In such cases, non-compete clauses may appear to protect trade secrets, but in effect they may become a means of controlling talent mobility and increasing competitors' recruitment costs. When non-compete clauses are applied indiscriminately, they may affect employees' freedom of employment, the protection of corporate trade secrets, and competition in the labor market [2].

This paper examines the reasonable boundaries of non-compete clauses, focusing on the prerequisites and limits of their application. Non-compete clauses should serve genuine and specific confidentiality interests, rather than general competitive interests. Their application should be confined to senior managers, senior technical personnel, and other employees subject to confidentiality obligations. The duration, geographical scope, industry scope, economic compensation, and liquidated damages should correspond to the information accessed by the employee and the intensity of the restriction. This inquiry helps distinguish justified non-compete clauses from clauses that have departed from the purpose of trade secret protection, and provides the basis for further discussion of applicable personnel, compensation mechanisms, judicial review, and liability for breach [3].

## **2. Theoretical Foundation**

### **2.1. Historical Formation and Development**

The early form of non-compete clauses can be traced to the rules on restraint of trade in English common law. Early English courts were cautious toward agreements that restricted a person's ability to earn a living or conduct business. This caution was not based on the protection of trade secrets in the modern sense, but on the concern that such restrictions might deprive workers or business operators of income derived from their own skills. Dyer's Case in 1414 is often cited as an early case involving restraints on business activity. *Mitchel v. Reynolds* in 1711 marked a later shift in judicial reasoning: restrictive covenants were no longer rejected in all circumstances, and courts began to examine whether the restraint had a legitimate basis and whether it exceeded what was necessary. Non-compete clauses thus developed from restraints generally viewed with suspicion into contractual arrangements that could be recognized under limited conditions.

After the Industrial Revolution, the expansion of business organizations changed the function of non-compete clauses. Technical information, customer relationships, and operational resources acquired independent competitive value in employment relationships. Judicial scrutiny gradually moved beyond the question of contractual

consent and began to focus on whether the employer had a legitimate interest worthy of protection, and whether the duration, geographical scope, and business scope of the restriction were reasonable. The connection between non-compete clauses, trade secret protection, employees' duty of loyalty, and employers' legitimate business interests was strengthened in this process [4].

Since the 20th century, different jurisdictions have adopted different approaches to non-compete clauses. Common law jurisdictions have generally relied on case-by-case reasonableness review, while civil law jurisdictions have more often used statutory rules to define applicable personnel, duration, compensation, and validity. Despite these differences, non-compete clauses are rarely treated as a matter of pure contractual freedom. They involve trade secret protection, employees' freedom of employment, and market competition. Whether the means of restriction are proportionate to the protected interest has gradually become an important criterion for evaluating their validity.

China's non-compete regime developed relatively late. Early relevant provisions were scattered across the Company Law of the People's Republic of China (hereinafter referred to as the Company Law), the Law of the People's Republic of China Against Unfair Competition (hereinafter referred to as the Anti-Unfair Competition Law), and local regulations. Non-compete obligations under the Company Law mainly serve the fiduciary duties of directors and senior management, while non-compete clauses under labor law are premised on employees' confidentiality obligations. The two differ in the basis of obligation, applicable personnel, and liability structure [5]. After the implementation of the Labor Contract Law in 2008, post-employment non-compete clauses obtained a clearer national legal basis. Later judicial interpretations further supplemented rules on economic compensation, termination of non-compete agreements, continued performance, and reasonableness review. As a result, the legal treatment of non-compete clauses in China has moved from formal contractual recognition toward substantive review of confidentiality interests, labor mobility, and the intensity of restriction.

## **2.2. Core Principles and Boundaries**

### **2.2.1. The Reasonableness of Non-Compete Clauses**

Reasonableness depends first on whether the protected matter is specific. A company's commercial interests are not equivalent to trade secrets. Customer data, technical solutions, operational information, product plans, and similar materials may support non-compete clauses only when they have confidential attributes and competitive value. General experience, professional skills, and public knowledge acquired during employment remain part of the employee's own working capacity. They cannot be removed from the labor market merely because the employee once worked for a particular employer. Non-compete clauses restrain specific competitive conduct directed against the former employer, rather than ordinary

employment activities [1].

Article 13 of the Interpretation (II) on Labor Dispute Cases provides that where an employee has not had knowledge of, or access to, the employer's trade secrets or confidential matters related to intellectual property rights and requests confirmation that the non-compete clause does not take effect, the people's court shall uphold the request in accordance with law. This rule prevents the validity of a non-compete clause from being judged only by the existence of a written agreement. Without access to confidential matters, the clause lacks a factual basis. If the employee's access is limited, the restriction should remain limited as well.

### **2.2.2. Balancing Rights and Conflicting Interests**

Non-compete clauses place the employer's confidentiality interests and the employee's freedom of employment within the same legal relationship. Employers seek to prevent trade secrets from flowing to competitors through employee mobility; employees need to rely on their existing knowledge, experience, and skills to secure future work. The function of a non-compete clause is not to give the employer continuing control over the employee's career path, but to replace broad employment exclusion with a narrower obligation not to compete.

Article 23 of the Labor Contract Law requires employers to provide monthly economic compensation during the non-compete period. This compensation is not merely a contractual payment. It is part of the legal structure that makes the post-employment restriction acceptable. The employee assumes a non-compete obligation after departure, and the employer bears the corresponding payment obligation. Compensation does not make every restriction valid, but the absence of compensation, or a clear imbalance between compensation and the burden imposed on the employee, weakens the legitimacy of the clause [6].

### **2.2.3. Defining Time and Geographic Limits**

Article 24 of the Labor Contract Law provides that the post-employment non-compete period shall not exceed two years. Two years is a statutory maximum, not a standard term. The actual duration should be determined by the nature of the confidential information, the period during which it retains value, and the level of competitive risk. Some information is highly time-sensitive. Once it no longer provides a competitive advantage, continued restriction becomes harder to justify.

Geographical boundaries should be connected to the protected confidential matters. A company's registered business scope, actual business operations, customer distribution, market coverage, and the possible area of influence of the information accessed by the employee may all affect the reasonableness of the restriction. The key is not the size of the administrative region, but whether the restricted area has a practical connection with the confidentiality interest.

Industry boundaries should be assessed by reference to similar products, similar

business operations, and actual competitive relationships. Article 24 of the Labor Contract Law refers to employment with other employers in a competitive relationship, or self-employment in producing or operating similar products or engaging in similar business operations. This does not mean that employees may be barred from all related industries. Whether upstream or downstream enterprises, affiliated enterprises, or potential competitors fall within the restriction should depend on the confidential matters accessed by the employee. An overly broad industry scope may turn a clause aimed at preventing misuse of confidential information into one that restricts ordinary employment.

#### **2.2.4. Distinction Between Industry and Job Function**

The scope of personnel is a threshold issue. Article 24 of the Labor Contract Law applies to senior managers, senior technical personnel, and other employees subject to confidentiality obligations, which means that non-compete clauses are not designed for all employees. Senior managers may have access to business decisions, client arrangements, and business plans. Senior technical personnel may have access to R&D plans, technical routes, and product materials. These positions are more likely to justify post-employment restrictions. For ordinary employees, the decisive issue is whether they actually bear confidentiality obligations and have access to confidential matters.

Job titles cannot replace substantive assessment. Senior managers and senior technical personnel are not automatically subject to post-employment non-compete obligations. Ordinary employees are not categorically excluded either. The applicable personnel, confidential matters, and scope of restriction should correspond to one another. A non-compete clause has a stronger basis only when the employee's position gave them actual access to confidential matters and the agreed restriction is proportionate to that access. Otherwise, even a formally complete agreement may lack necessity [7].

### **3. Practical Challenges and Boundary-Setting**

#### **3.1. Application in the High-Tech Industry**

High-tech enterprises often rely on technical solutions, R&D materials, product plans, customer data, and business strategies to maintain their competitive position. When core R&D personnel, algorithm engineers, product managers, or senior executives leave for competitors, the former employer may face risks concerning trade secret protection. The use of non-compete clauses in this sector therefore has a practical basis, provided that the restriction is tied to specific confidential matters. The difficulty is that industry characteristics are sometimes used to replace individual assessment. Positions in technology companies differ greatly. Employees who handle source code, model parameters, or core R&D documents do not stand in the same position as employees engaged only in testing, operational support,

general sales, or basic maintenance. If an employer requires employees to sign non-compete clauses merely because the company belongs to the high-tech or internet sector, it treats the industry label as a substitute for confidential matters and the job title as a substitute for substantive review. General technical experience and professional ability acquired by employees should not be absorbed into the scope of non-compete protection [7].

Information in high-tech industries may also lose value quickly. Technical materials, product designs, and operational plans often depend on market iteration and technological updates. A mechanically long restriction period may exceed the actual need for trade secret protection if the information no longer provides a competitive advantage. For technical personnel, being kept away from their professional field for an extended period may also interrupt skill development and reduce employment opportunities. Once a non-compete clause shifts from protecting confidential matters to locking in technical talent, its legitimacy becomes doubtful [2].

### **3.2. Platform-Based Employment and Non-Compete Restrictions**

Employment arrangements in the platform economy are not uniform. Delivery, ride-hailing, content production, project outsourcing, technology development, and platform operations may involve different legal relationships. Some resemble employment relationships, while others are closer to service contracts, work-for-hire arrangements, or cooperation agreements. Since non-compete clauses under the Labor Contract Law are mainly premised on employment contract relationships, applying them before clarifying the nature of the relationship may blur the line between labor law obligations and general contractual obligations.

Front-end service positions are usually far from a platform's core technology, algorithmic rules, and business decisions. Delivery riders, ride-hailing drivers, and general service providers mainly provide labor or services and do not necessarily have access to trade secrets or confidential matters related to intellectual property rights. Requiring them to assume post-employment non-compete obligations often makes the protected matter difficult to identify. Positions involving technology, operations, data, security, and product development are different. Employees in these roles may have access to algorithmic rules, user data, business strategies, or platform governance mechanisms. Non-compete clauses in the platform economy should therefore turn on the nature of the legal relationship, the content of the position, and the confidential matters actually accessed.

Flexible employment may also weaken workers' bargaining position. Some workers have short contract terms and unstable income sources, leaving little room to negotiate standard-form clauses. If a non-compete clause has no connection with confidential matters but still restricts a worker from moving to another platform or a related industry through broad restrictions and liquidated damages, the clause changes the basic mobility of flexible work. At that point, the dispute is no longer

only about contract performance; it also affects platform-based employment practices and competition in the labor market [2].

### **3.3. Judicial Review Standards**

Judicial interpretations have provided a basic framework for non-compete disputes. The remaining difficulty lies in proving confidential matters, identifying actual competitive conduct, and determining liability in individual cases [9].

Disputes often begin with the identification of confidential matters. Employers may rely on client resources, operational information, technical data, or project experience as grounds for restriction, but these materials are not automatically trade secrets. The court must examine secrecy, commercial value, and the confidentiality measures taken by the employer, and then determine whether the employee actually had knowledge of, or access to, the information. If access is inferred only from job title, seniority, or the existence of a confidentiality agreement, the review becomes formal rather than substantive.

Breach determination requires the same caution. Joining a new employer does not by itself constitute a violation of a non-compete clause. A similar business scope between the new employer and the former employer does not by itself establish substantial competition. The review should consider the employee's actual duties at the new employer, the relationship between those duties and the former employer's similar products or business operations, and whether the conduct falls within the agreed restriction. Social insurance payment records, business registration materials, website descriptions, third-party statements, and project files may be relevant, but their probative value depends on whether they show actual competitive conduct. The difficulty in such disputes often lies in fact-finding and evidence evaluation, not in the text of the rule itself [8].

Liquidated damages further increase the need for judicial discretion. Employers often find it difficult to prove actual losses caused by breach and therefore set high liquidated damages in advance. Once breach is found, the employee may face liability exceeding their income level even where no trade secret has actually been disclosed. Courts need to respect contractual arrangements while preventing liquidated damages from becoming punitive. More stable factors for adjustment may include the amount of economic compensation, the duration of the restriction, the length of breach, the employee's position, and whether confidential matters were actually used or disclosed [3].

## **4. Approaches and Recommendations for Improvement**

### **4.1. Improving the Legal Framework for Non-Compete Agreements**

#### **4.1.1. Strengthening Legislative Provisions on Non-Compete Clauses**

Existing legislation has established the basic framework for non-compete clauses, but further clarification is still needed in identifying covered employees and

preventing overly broad application. In practice, some employers include non-compete clauses in standard employment contracts without specifying the confidential matters involved, turning a trade secret protection mechanism into a tool for restricting employee mobility.

The application of non-compete clauses should depend on whether the employee has actually had knowledge of, or access to, trade secrets or confidential matters related to intellectual property rights. A signed contract alone should not be sufficient to establish the validity of such a clause. Legislation and judicial guidance should require employers to explain the connection between the restriction and the confidential matters accessed by the employee.

#### **4.1.2. Improving Judicial Interpretations and Adjudication Standards**

On the basis of Article 13 of the Interpretation (II) on Labor Dispute Cases, adjudication standards should further clarify the order of review: applicable personnel, confidential matters, scope of restriction, economic compensation, and liability.

Future guidance should distinguish employment with a competing entity from actual competitive conduct, and clarify the evidentiary weight of business registration records, social insurance records, job descriptions, and project materials.

Liquidated damages should also be governed by more stable discretionary factors. Employers often find it difficult to prove actual loss and therefore set high liquidated damages in advance. Once breach is established, the employee may face liability far beyond their income level. Courts may consider the amount of economic compensation, the duration of the restriction, the length of breach, the employee's position, and whether confidential matters were actually used or disclosed. Liquidated damages should retain their binding effect, but should not become a punitive device detached from actual loss and compensation [3].

### **4.2. Establishing Comprehensive Compensation and Incentive Mechanisms**

#### **4.2.1 Establishing a Reasonable Compensation Mechanism**

Article 36 of the Interpretation (I) on Labor Dispute Cases provides that where the parties have agreed on a non-compete clause in an employment contract or confidentiality agreement but have not agreed on economic compensation after the rescission or termination of the employment contract, the people's court shall support the employee's claim for monthly economic compensation equal to 30% of the employee's average monthly wage during the 12 months before the rescission or termination of the employment contract, provided that the employee has performed the non-compete obligation. If this amount is lower than the local minimum wage standard at the place where the employment contract was performed, the minimum

wage standard shall apply. This rule resolves the calculation of compensation in the absence of an agreement, but it does not mean that compensation for all non-compete clauses should remain at that level.

The compensation standard should correspond to the burden imposed by the restriction. A longer duration, broader geographical scope, or wider industry scope reduces the employee's employment options more substantially. If the compensation remains low despite a heavy restriction, the clause may formally contain consideration but still transfer most of the cost to the employee. Economic compensation is therefore not only a matter of contractual performance; it also affects the fairness of the non-compete clause.

For general and low-skilled positions, the issue should not be solved by reducing compensation. If the employee has not had knowledge of, or access to, trade secrets or confidential matters related to intellectual property rights, the non-compete clause lacks a valid basis. Only when an ordinary employee has actually accessed confidential matters because of the position is it necessary to further assess the amount of compensation and the scope of restriction.

#### **4.2.2. Establishing Talent Incentive and Mobility Mechanisms**

Non-compete clauses cannot replace internal talent governance. Salary arrangements, promotion channels, project rewards, equity incentives, information classification, access control, confidentiality training, and handover procedures can reduce risks related to employee retention and trade secret protection. A non-compete clause is justified only when these measures are insufficient to prevent a specific employee from creating a post-employment competition risk based on confidential matters [2].

### **4.3. Strengthening Consultation Between Enterprises and Employees**

#### **4.3.1. Establishing an Equal Negotiation Mechanism**

Non-compete clauses are often drafted by employers, and employees may have little practical choice but to accept or reject them. A signature alone does not prove that the employee understands the scope of restriction or the consequences of breach. When an employer requires an employee to assume a non-compete obligation, it should separately disclose the duration, geographical scope, competing entities or restricted business areas, economic compensation standard, payment method, and liability for breach. The heavier the restriction, the stronger the duty of explanation should be.

The negotiation mechanism should reduce information asymmetry rather than add unnecessary procedures. Employees should know why they are subject to the restriction, which post-employment conduct may constitute breach, how compensation is calculated, and when the employer may lift the restriction. Terms such as "competing entities," "related industries," or "related business" should not

remain purely general. Otherwise, employees cannot reasonably anticipate employment risks, and employers may expand the meaning of the clause after a dispute arises.

#### **4.3.2. Promoting Dialogue and Consultation During Performance**

After a non-compete clause is signed, the value of confidential matters, the scope of the company's business, and the employee's career direction may change. Necessary communication during performance can reduce avoidable disputes. If the prospective employer has no substantial competitive relationship with the former employer, or if the proposed position does not involve restricted business, the employee should have an opportunity to explain the situation. If the confidential matters have lost competitive value, the employer should narrow or lift the restriction in time.

Third-party mechanisms should not be designed as mandatory prior approval. Labor arbitration bodies mainly resolve disputes that have already arisen and are not suitable as review authorities before agreements are signed. A more workable approach is to rely on labor unions, industry associations, or corporate compliance departments to provide model clauses and risk notices. Clear procedures cannot replace substantive reasonableness, but they can reduce excessive restrictions caused by standard-form clauses and information asymmetry.

### **5. Conclusion**

Non-compete clauses are justified when they protect trade secrets or related confidential matters, not when they serve as general tools for preserving employers' competitive advantages. Without a genuine confidentiality interest, such clauses may become contractual restrictions on employees' post-employment choices.

China has developed a statutory and judicial framework based on applicable personnel, economic compensation, maximum duration, and proportionality review. Future improvement should focus on the correspondence among confidential matters, applicable personnel, scope of restriction, economic compensation, and liability. Restrictions serving genuine trade secret protection should be supported, while excessive restrictions or clearly disproportionate liability should be limited, so that non-compete clauses can protect employers' legitimate interests without unduly restricting employees' freedom of employment and labor market competition.

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