

China Issues New Non-Compete Compliance Guidelines

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Non-compete clauses serve as a critical mechanism for enterprises to safeguard trade secrets and preserve their competitive advantage in China's increasingly dynamic environment. However, excessive or improper use of such clauses has led to frequent disputes in practice. Several enterprises have abused the use of non-compete clauses and have therefore hindered talent mobility.

On September 4, 2025, the General Office of the Ministry of Human Resources and Social Security of China issued the Compliance Guidelines for Enterprises Implementing Non-Compete Agreements (the "**Guidelines**"). The Guidelines provide practical recommendations on the lawful implementation of non-compete restrictions. Their overarching objective is to strike an appropriate balance between the protection of corporate trade secrets and the legitimate rights and interests of employees.

Although the Guidelines lack mandatory legal effect, they articulate a broadly shared understanding among administrative and judicial bodies concerning post-employment competition restrictions and associated regulatory concerns. From a compliance and risk management perspective, the Guidelines constitute a valuable reference for enterprises in formulating, reviewing, and executing non-compete arrangements, offering meaningful direction for both corporate governance and legal practice.

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1. Prerequisites for Non-Compete Obligations: Employers Must First Identify and Define Legitimate Trade Secrets

Article 13, Paragraph 1 of the Interpretation (II) of the Supreme People's Court on Issues Concerning the Application of Law in the Trial of Labor Dispute Cases (the "**Judicial Interpretation II**"), effective as of September 1, 2025, clarifies that:

“Where an employee is unaware of, or has no access to, the employer’s trade secrets or confidential matters related to intellectual property, and the employee requests a declaration that a non-compete clause is invalid, the people’s court shall uphold such a request in accordance with the law.”

The Guidelines echo this provision, emphasizing that employers must first identify and define the content and scope of their trade secrets before imposing non-compete obligations. It reminds employers that enforceable non-compete clauses must be grounded in clearly established and legitimate trade secrets.

Meanwhile, the Guidelines reiterate that trade secrets must satisfy three statutory requirements: (i) secrecy, which means information that is not known to the public and cannot be obtained from public sources; (ii) value, which means information that can bring real or potential value and competitive advantage to the rights holder; and (iii) confidentiality, which means that the rights holder has taken reasonable confidentiality measures to protect their trade secrets, while expressly excluding general industry knowledge, standard business practices, and information readily available through public channels. This approach aligns with the definition of “trade secrets” under the PRC Anti-Unfair Competition Law, and aims to prevent employers from improperly expanding the scope of protection.

In light of the above, enterprises are advised to specify the content and boundaries of trade secrets in relevant agreements and maintain proper documentation of the confidentiality measures adopted. Such measures may include, among others, implementing tiered confidentiality management, conducting regular confidentiality training, setting information access controls, and employing data encryption systems.

2. Scope of Application: Non-Compete Clauses Should Apply Exclusively to Employees with Access to Trade Secrets

Articles 6 and 7 of the Guidelines narrowly define the categories of employees to whom non-compete clauses may lawfully apply, emphasizing adherence to the principle of necessity and reasonableness. Employers are required to confine the application of such clauses to employees who actually possess or have access to trade secrets, primarily including senior management, senior technical personnel, and other employees subject to confidentiality obligations. The Guidelines also encourage enterprises to prioritize internal confidentiality mechanisms as a primary safeguard, thereby reducing overreliance on non-compete arrangements. At the same time, the Guidelines make clear that non-compete clauses are not applicable to ordinary employees who merely possess general professional skills, industry experience, or business knowledge obtained through ordinary work exposure.

Substantively, these provisions further refine and reiterate the requirements set out under Article 24 of the PRC Labor Contract Law (the “**Labor Contract Law**”) and Judicial Interpretation II concerning the permissible scope of non-compete agreements. By doing so, the Guidelines seek to prevent employers from arbitrarily expanding the scope of application, reflecting the prevailing judicial tendency to exercise prudence and proportionality in assessing the enforceability of such clauses.

From a compliance perspective, enterprises are advised to strengthen internal trade secret management systems and adopt preemptive protective measures—such as access control mechanisms, data encryption, and the establishment of declassification periods—to safeguard confidential information at the source. Where the execution of non-compete agreements is genuinely necessary, employers should conduct a necessity assessment, strictly define the categories of personnel subject to restriction, and comply with appropriate notification procedures. Such measures help ensure the enforceability of non-compete clauses and mitigate the risk of their invalidation in subsequent disputes.

3. Limitation on Key Terms: the Scope, Geographical Area, and Duration of Non-Compete Agreements Must Be Reasonable and Proportionate

Articles 10 and 11 of the Guidelines further elaborate on the principle of reasonableness governing the scope, geographical area, and duration of non-compete restrictions. Enterprises are required to define these restrictions in a rational and proportionate manner, taking into account their business scope, competitive landscape, and the employee's actual level of access to confidential information.

In terms of the scope, restrictions should apply only to enterprises engaged in the same or similar lines of business that compete with the employer. The Guidelines encourage employers to specify such entities through an enumerated list to ensure clarity and enforceability.

Geographical restrictions must correspond to the enterprise's actual operational footprint and may not be unreasonably extended on a national or global scale without sufficient justification.

As for duration, the restriction period should be determined with reference to the degree of confidentiality involved and the effective confidentiality period of the trade secrets, and may not, in any event, exceed two years after the post-termination. Any subsequent adjustment to these terms requires mutual consultation and written amendment with the employee.

The above represents a detailed extension of the principle of proportionality embodied in Article 24 of the Labor Contract Law and Article 13 of Judicial Interpretation II. In addition to reaffirming that the scope of non-compete obligations must correspond to the employee's degree of access to confidential information, the Guidelines also introduce the employer's business scope and market competition conditions as key criteria for assessing reasonableness. The specific guidance encouraging precision in defining restricted entities and requiring a factual basis for geographical limitations reflects the prevailing judicial trend toward stricter scrutiny of overly broad or abusive non-compete clauses. This approach aims to prevent employers from unduly restricting employees' right to freely choose their occupation.

In light of the above, enterprises are advised to carefully delineate the parameters of non-compete obligations. This includes specifying the scope of competing businesses through a clear and enumerated list, aligning restricted territories with the company's actual operational presence, and setting the duration based on the sensitivity and time value of the trade secrets involved. Such prudence will help reduce the risk of non-compete clauses being deemed invalid or unenforceable in judicial review.

4. Clarifying Standards for Compensation and Liquidated Damages

Articles 12 to 14 and Article 16 of the Guidelines provide detailed guidance on determining standards of economic compensation and liquidated damages in non-compete agreements.

With respect to economic compensation, the Guidelines explicitly require enterprises to make payments monthly and in monetary form, prohibiting employers from refusing such payments on the grounds that compensation was already included in wages or bonuses during employment. The amount of compensation should be determined reasonably, taking into account factors such as the research and development costs and commercial value of the trade secrets, the scope of the restriction, the employee's wage level, and the restriction's impact on the employee's subsequent employment and career development.

As a general principle, monthly economic compensation should not be less than 30% of the employee's average monthly wage during the twelve months preceding termination, and must not fall below the local minimum wage standard. Where the non-compete period exceeds one year, the Guidelines recommend that the compensation ratio be increased to 50% or above to maintain fairness and proportionality.

Regarding liquidated damages, the Guidelines provide that the amount should be agreed upon reasonably, with reference to the employee's potential economic losses and the total amount of economic compensation payable during the non-compete period. As a general guideline, liquidated damages should not exceed five-times the total agreed economic compensation corresponding to the restriction period.

Although no unified national standard currently exists for determining economic compensation and liquidated damages under non-compete agreements, the Guidelines offer valuable reference and proportional benchmarks, expanding on Article 36 of the Judicial Interpretation (I) on Several Issues Concerning the Application of Law in Labor Dispute Cases ("**Judicial Interpretation I**"). At the same time, the Guidelines explicitly reject the practice of offsetting or substituting non-compete compensation with in-service benefits, thereby reinforcing the principle of fair and independent compensation.

The Guidelines' approach to liquidated damages reflects an emphasis on rationality and proportionality, aligning the scope of breach liability with the employer's actual economic loss. This framework encourages parties to negotiate balanced and realistic compensation and penalty arrangements that withstand judicial scrutiny.

In light of these provisions, enterprises are advised to determine the standards for economic compensation and liquidated damages with due consideration of employees' specific levels of access to trade secrets, while referring to the proportional guidance set out in the Guidelines. Such calibrated arrangements will enhance enforceability and reduce the risk of disputes over non-compete compliance.

5. Establishing Remedial Procedures for Non-Compete Breaches and Guiding Both Parties in Protecting Their Rights

Articles 17, 19, and 21 of the Guidelines provide detailed guidance on remedial procedures in the event of breaches of non-compete obligations. For enterprises, Article 19 explicitly affirms the right to require employees to report their employment status and permits verification of compliance through public information, business analysis, and other appropriate methods.

In cases of employee breach, the Guidelines emphasize that enterprises may seek remedies through multiple approaches:

- (1) Demanding liquidated damages while continuing to insist on the employee's performance of non-compete obligations, thereby ensuring the ongoing effectiveness of the restriction;
- (2) Claiming additional compensation where actual losses exceed the agreed liquidated damages, reflecting both compensatory and deterrent considerations; or
- (3) Seeking remedies through arbitration or litigation proceedings.

Building upon Article 38 of the Judicial Interpretation I, which provides that:

"If an employer fails to pay economic compensation for three months due to its own reasons, and the employee requests to terminate the non-compete agreement, the people's court shall uphold such request,"

the Guidelines introduce a more employee-friendly standard:

"If the enterprise fails to pay economic compensation in a timely and full manner for more than one month and still fails to make the payment after being reminded by the employee, the employee may no longer be bound by the non-compete obligation."

This provision significantly lowers the threshold for employees to terminate non-compete agreements. Simultaneously, it explicitly permits employees to submit complaints to the human resources and social security administrative departments, thereby broadening the avenues for administrative remedies.

It should be noted that since the Guidelines are advisory in nature, it remains uncertain whether courts will adopt these provisions directly in judicial practice. Nevertheless, enterprises are strongly advised to reference these recommendations in operational practices and to strictly fulfill their compensation obligations, thereby mitigating potential legal and compliance risks.

Final Considerations

The Guidelines offer a structured framework addressing recurring disputes and ambiguities in non-compete practices. By clarifying key aspects—including eligible employees, scope of restrictions, economic compensation, liquidated damages, and remedial procedures, the Guidelines provide enterprises with practical guidance for lawful and effective implementation. Although not legally binding, the Guidelines closely reflect current judicial and administrative trends, emphasizing the prevention of rights abuse while balancing the legitimate interests of employers and employees.

Enterprises should treat the Guidelines as a strategic reference and, in light of their specific trade secret protection needs and organizational structure, continuously refine their trade secret management and non-compete practices. Such proactive measures will enhance compliance, mitigate legal risk, and help achieve a sustainable balance between safeguarding trade secrets and facilitating reasonable talent mobility.

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