

Law 347-001 | Trade Secrets Law | Spring 2025 | 1 credit
Professor(s): Frederic M. Meeker & Evi Christou
Tues. 6:05-8:05 pm EST | **Final Exam:** Tues., March 18, 6:05 pm EST

Reading(s): [REQUIRED]

1. The Virginia Uniform Trade Secrets Act
2. Federal Trade Secret Law: Economic Espionage Act

Communication(s):

Frederic M. Meeker
Attorney At Law **Banner & Witcoff, Ltd.**
1100 13th Street NW, Suite 1200
Washington, DC 20005-4051
Main: 202.824.3000
Direct: 202.824.3116
Email: fmeecker@bannerwitcoff.com

Evi Christou
Attorney At Law
Banner & Witcoff, Ltd.
1100 13th Street NW, Suite 1200
Washington, DC 20005-4051
Main: 202.824.3000
Direct: 202.824.3261
Email: echristou@bannerwitcoff.com

COURSE DESCRIPTION & OBJECTIVES

After completion of this course, students will be able to understand trade secrets, how to apply trade secret agreements in employment, litigation, joint ventures, supplier agreements, and with customers.

GRADING & PARTICIPATION

Grading for the course will be based on a final in-class exam, which is subject to modification based upon course participation and attendance. The final exam comprises a mixture of true and false and short essay questions.

1. **Trade Secrets v. Other Forms of Protection**
January 21, 2025

Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470, 94 S.Ct. 1879, 1974 U.S. Lexis 134, 181 USPQ 673 (1974) (All)

DVD Copy Control Ass'n Inc. v. Bunner, 31 Cal. 4th 864, 2003 Cal. Lexis 6295, 68 USPQ2d 1385 (2003) (pp. 1386; I A, pp. 1387-88, II pp. 138990; III B, pp. 1390-92; III D, pp. 1396-98)

Computer Assoc. International, Inc. v. Altai, Inc., 982 F.2d 693, (2nd Cir. 1992) (Section II A., pp. 716-719); 1992 U.S. App. Lexis 33369

Harold L. Bowers v. Baystate Technologies, Inc., 320 F.3d 1317, 2003 U.S. App. Lexis 1423, 65 USPQ2d 1746 (Fed. Cir. 2003) (pp. 1323-1328, 1335-1338)

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2. **Subject Matter of Trade Secrets & Competitive Advantage**
January 28, 2025

Optic Graphics, Inc. v. Agee, 87 Md. App. 770, 591 A2d 578 (Md. App. 1991)
(Part I, pp. 584-587); 1991 Md. App. Lexis 148 (1991)
Air Products & Chemicals Inc. v. Chas. S. Tanner Co., 1983 U.S. Dist. Lexis 17243, 219
USPQ 223 (D.S.C. 1983) (Part "V, A, B & C" pp. 251-253)
Web Communications Group v. Gateway 2000, Inc. 889 F. Supp. 316, (N.D.Ill., 1995)
(Part III A., pp. 319-321); 1995 U.S. Dist. Lexis 3992
Tao of Systems Integration Inc. v. Analytical Services, 299 F. Supp. 2d 565, pp. 568-570; 574-576
(E.D. Va. 2004); 2004 U.S. Dist. Lexis 313
Microstrategy Inc. v. Business Objects S.A., 331 F. Supp. 2d 396 (ED Va 2004)
(pp. 421-426); 2004 U.S. Dist. Lexis 18228
E.I. DuPont deNemours & Co. v. Christopher, 431 F.2d 1012, 1970 U.S. App. Lexis 8091, 166
USPQ 421, 167 USPQ 1 (5th Cir. 1970) (All)

3. **Secrecy - Techniques for Protection & Secrecy (Publication)**
February 4, 2025

Hoechst Diafoil Co. v. Nan Ya Plastics Corp., 174 F.3d 411, 1999 U.S. App. Lexis 6092, 50
USPQ2d 1332 (4th Cir. 1999) (pp. 1332-1338)
B.C. Ziegler & Co. v. Ehren, 141 Wis. 2d 19, 414 NW 2d 48 (1987); 1987 Wisc. App. Lexis
4024 (All)
Matter of Innovative Construction Systems Inc., 793 F.2d 875, 1986 U.S. App. Lexis 26357, 230
USPQ 94 (7th Cir. 1986) (pp. 94-103)
Aqua Connect, Inc v. Code Rebel, LLC, 2012 WL 469737 (C.D. Cal. 2012) (All)
Secure Services Technology Inc. v. Time and Space Processing Inc., 722 F. Supp. 1354, 1989
U.S. Dist. Lexis 11848, 12 USPQ2d 1617 (E.D. Va 1989) (pp. 1356-1632)
Rhone-Poulenc Agro SA v. DeKalb Genetics Corp., 272 F.3d 1335, 2001 U.S. App. Lexis 24812, 60
USPQ2d 1769 (Fed. Cir. 2001) (Sections I, VI)
Group One Ltd. v. Hallmark Cards Inc., 254 F.3d 1041, 2001 U.S. App. Lexis 13291, 59
USPQ2d 1121 (Fed. Cir. 2001) (Section III only)

4. **Wrongful use - Special Relationship- (including submission of outside ideas and
employee covenants)**
February 11, 2025

Smith v. Snap-On Tools Corp., 833 F.2d 578, 1987 U.S. App. Lexis 17404,5 USPQ2d 1122 (5th Cir.1987)
(All)
Raybestos-Manhattan, Inc. v. Rowland, 460 F.2d 697, 1972 U.S. App. Lexis 9346,
174 USPQ 137 (4th Cir. 1972) (All)
Burten v. Milton Bradley Co., 763 F.2d 461, 1985 U.S. App. Lexis 20697,
226 USPQ 605 (1st Cir. 1985) (All)
Dionne v. Southeast Foam Converting & Packaging Inc., 240 Va 297, 1990 Va. Lexis 121, 17
USPQ2d 1565 (Va., 1990) (All)
Roto-Die Co. v. Lesser, 899 F. Supp. 1515 (W.D. Va., 1995) (pp. 1517-1522),
1995 U.S. Dist. Lexis 14806
Lanmark Technology Inc. v. Canales, 454 F.Supp 2d 524 (ED VA 2006) 2006 U.S. Dist. Lexis
72012 (All)
Pepsi Co, Inc. v. Redmond, 54 F.3d 1262, 1995 U.S. App. Lexis 10903,
35 USPQ2d 1010 (7th Cir. 1995) (Part "A" pp. 1267-1271)

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FTC Non-Compete Ban (Final Rule – April 2024) 16 C.F.R. §§ 910.1-910.6 (Attached)
Ryan LLC (et al) v. FTC, 2024 WL 3879954 (N.D.Tex. Aug. 20, 2024)
(Sections I, III, and IV)

**5. Wrongful Use and Transferring Rights (Joint Development and Confidentiality Provisions)
February 18, 2025**

Lamb-Weston, Inc. v. McCain Foods, Ltd., 941 F.2d 970, 1991 U.S. App. Lexis 18091, 19 USPQ2d 1775 (9th Cir. 1991) (Sections I and II, pp. 972-973)

Williams v. Curtiss-Wright Corp., 681 F.2d 161, 1982 U.S. App. Lexis 19108, 216 USPQ 108 (3rd Cir. 1982) (Section II, pp. 163-164)

Chicago Lock Co. v. Fanberg, 676 F.2d 400, 1982 U.S. App. Lexis 19484, 216 USPQ 289 (9th Cir. 1982) (All)

Aronson v. Quick Point Pencil Co., 440 U.S. 257, 1979 U.S. Lexis 64, 201 USPQ 1 (1979) (All)

Roton Barrier, Inc. v. The Stanley Works, 79 F.3d 1112, 1996 U.S. App. Lexis 5380, 37 USPQ2d 1816 (Fed. Cir. 1996) (Excluding Section IV)

**6. Defenses/Trial Strategy & Remedies
February 25, 2025**

Standard Brands Inc. v. Zumpe, 264 F. Supp. 254, 1967 U.S. Dist. Lexis 11364, 152 USPQ 731 (ED. La., 1967) (pp. 260-271)

Capital Tool & Jo.Mfg. Co. v. Maschinenfabrik Herkules, 837 F.2d 171, 1988 U.S. App. Lexis 434, 5 USPQ2d 1910 (7th Cir. 2001)

Seatrac Inc. v. Sonbeck International, Inc., 200 F.3d 358, 2000 U.S. App. Lexis 883, 53 USPQ2d 1513 (5th Cir. 2000) (Section I, pp. 1515-1518)

Automated Technologies Inc. v. Eller; 160 F. Supp 2d 915 (I Trade Secrets; V Protective Order) (N.D. III 2001), 2001 U.S. Dist. Lexis 9728

Mike's Train House, Inc. v. Lionel L.L.C., 472 F.3d 398 (6th Cir 2006).

(Section 3B “Specificity of Trade Secrets”); 2006 U.S. App. Lexis 30628

Atlantic Research Marketing Systems, Inc. v. Stephen P. Troy, (Fed. Cir. 2011) 2011-1002, 1003, (Section III, pp. 17-20)

**7. Lecture on U.S. Trade Secret Law and Trade Secret Protection in Foreign Countries/Course Review
March 4, 2025**

Lecture - U.S. Trade Secret Law (18 USC ~ 1831-39) US

Attorney

Lecture Foreign Protection & Review

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FINAL EXAM TENTATIVE DATE
Tuesday, March 18, 2025; 6:05-8:05 p.m.

References

- A. Milgrim on Trade Secrets, by Roger M. Milgrim, Matthew Bender, New York, NY.
- B. Trade Secrets A State-by-State Survey, Arnold Pedowitz, et al., The Bureau of National Affairs, Inc., Washington DC, 1997.
- C. Trade Secrets Protection and Exploitation, Jerry Cohen, et al., The Bureau of National Affairs Inc., Washington DC, 1998.
- D. Trade Secrets A Practitioner's Guide, Henry Perrit, Jr., Practicing Law Institute, New York, NY, 1994.
- E. Restatement of the Law of Unfair Competition (1993) §§ 39-45.
- F. Restatement of Torts (1939) § 757.
- G. The Trade Secret Handbook, Protecting Your Franchise System's Competitive Advantage, Michael J. Lockerby, Editor, ABA (2000).

West's Annotated Code of Virginia [Currentness](#)

Title 59.1. Trade and Commerce

→ [Chapter 26. Uniform Trade Secrets Act \(Refs & Annos\)](#)

→ [§ 59.1-336. Short title and definitions](#)

As used in this chapter, which may be cited as the Uniform Trade Secrets Act, unless the context requires otherwise:

“Improper means” includes theft, bribery, misrepresentation, use of a computer or computer network without authority, breach of a duty or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

“Misappropriation” means:

1. Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
2. Disclosure or use of a trade secret of another without express or implied consent by a person who
 - a. Used improper means to acquire knowledge of the trade secret; or
 - b. At the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was
 - (1) Derived from or through a person who had utilized improper means to acquire it;
 - (2) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use;
 - (3) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
 - (4) Acquired by accident or mistake.

“Person” means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

“Trade secret” means information, including but not limited to, a formula, pattern, compilation, program, device, method, technique, or process, that:

1. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
2. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

→ § 59.1-337. Injunctive relief

A. Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

B. In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

C. In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

→ § 59.1-338. Damages

A. Except where the user of a misappropriated trade secret has made a material and prejudicial change in his position prior to having either knowledge or reason to know of the misappropriation and the court determines that a monetary recovery would be inequitable, a complainant is entitled to recover damages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. If a complainant is unable to prove a greater amount of damages by other methods of measurement, the damages caused by misappropriation can be measured exclusively by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

B. If willful and malicious misappropriation exists, the court may award punitive damages in an amount not exceeding twice any award made under subsection A of this section, or \$350,000 whichever amount is less.

→ § 59.1-338.1. Attorneys' fees

If the court determines that (i) a claim of misappropriation is made in bad faith, or (ii) willful and malicious misappropriation exists, the court may award reasonable attorneys' fees to the prevailing party.

→ § 59.1-339. Preservation of secrecy

In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include:

1. Granting protective orders in connection with discovery proceedings;
2. Holding in-camera hearings;
3. Sealing the records of the action; and
4. Ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

→ § 59.1-340. Statute of limitations

An action for misappropriation shall be brought within three years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

→ § 59.1-341. Effect on other law

A. Except as provided in subsection B of this section, this chapter displaces conflicting tort, restitutionary, and other law of this Commonwealth providing civil remedies for misappropriation of a trade secret.

B. This chapter does not affect:

1. Contractual remedies whether or not based upon misappropriation of a trade secret; or
2. Other civil remedies that are not based upon misappropriation of a trade secret; or
3. Criminal remedies, whether or not based upon misappropriation of a trade secret.

→ § 59.1-342. Omitted

→ § 59.1-343. Time of taking effect

This chapter shall become effective on July 1, 1986, and shall not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the chapter also shall not apply to misappropriation that occurs after the effective date.

END OF DOCUMENT

United States Code Annotated [Currentness](#)

Title 18. Crimes and Criminal Procedure ([Refs & Annos](#))

▢ [Part I. Crimes \(Refs & Annos\)](#)

→ [Chapter 90. Protection of Trade Secrets](#)

→ [§ 1831. Economic espionage](#)

(a) In general.--Whoever, intending or knowing that the offense will benefit any foreign government, foreign instrumentality, or foreign agent, knowingly--

- (1) steals, or without authorization appropriates, takes, carries away, or conceals, or by fraud, artifice, or deception obtains a trade secret;
- (2) without authorization copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates, or conveys a trade secret;
- (3) receives, buys, or possesses a trade secret, knowing the same to have been stolen or appropriated, obtained, or converted without authorization;
- (4) attempts to commit any offense described in any of paragraphs (1) through (3); or
- (5) conspires with one or more other persons to commit any offense described in any of paragraphs (1) through (3), and one or more of such persons do any act to effect the object of the conspiracy, shall, except as provided in subsection (b), be fined not more than \$5,000,000 or imprisoned not more than 15 years, or both.

(b) Organizations.--Any organization that commits any offense described in subsection (a) shall be fined not more than the greater of \$10,000,000 or 3 times the value of the stolen trade secret to the organization, including expenses for research and design and other costs of reproducing the trade secret that the organization has thereby avoided.

→ [§ 1832. Theft of trade secrets](#)

(a) Whoever, with intent to convert a trade secret, that is related to a product or service used in or intended for use in interstate or foreign commerce, to the economic benefit of anyone other than the owner thereof, and intending or knowing that the offense will, injure any owner of that trade secret, knowingly--

- (1) steals, or without authorization appropriates, takes, carries away, or conceals, or by fraud, artifice, or deception obtains such information;
- (2) without authorization copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates, or conveys such information;
- (3) receives, buys, or possesses such information, knowing the same to have been stolen or appropriated, obtained, or converted without authorization;
- (4) attempts to commit any offense described in paragraphs (1) through (3); or
- (5) conspires with one or more other persons to commit any offense described in paragraphs (1) through (3), and one or more of such persons do any act to effect the object of the conspiracy, shall, except as provided in subsection (b), be fined under this title or imprisoned not more than 10 years, or both.

(b) Any organization that commits any offense described in subsection (a) shall be fined not more than \$5,000,000.

→ § 1833. Exceptions to prohibitions

This chapter does not prohibit—

- (1) any otherwise lawful activity conducted by a governmental entity of the United States, a State, or a political subdivision of a State; or
- (2) the reporting of a suspected violation of law to any governmental entity of the United States, a State, or a political subdivision of a State, if such entity has lawful authority with respect to that violation.

→ § 1834. Criminal forfeiture

Forfeiture, destruction, and restitution relating to this chapter shall be subject to [section 2323](#), to the extent provided in that section, in addition to any other similar remedies provided by law.

→ § 1835. Orders to preserve confidentiality

In any prosecution or other proceeding under this chapter, the court shall enter such orders and take such other action as may be necessary and appropriate to preserve the confidentiality of trade secrets, consistent with the requirements of the Federal Rules of Criminal and Civil Procedure, the Federal Rules of Evidence, and all other applicable laws. An interlocutory appeal by the United States shall lie from a decision or order of a district court authorizing or directing the disclosure of any trade secret.

→ § 1836. Civil proceedings to enjoin violations

(a) The Attorney General may, in a civil action, obtain appropriate injunctive relief against any violation of this chapter.

(b) The district courts of the United States shall have exclusive original jurisdiction of civil actions under this section.

→ § 1837. Applicability to conduct outside the United States

This chapter also applies to conduct occurring outside the United States if—

- (1) the offender is a natural person who is a citizen or permanent resident alien of the United States, or an organization organized under the laws of the United States or a State or political subdivision thereof; or
- (2) an act in furtherance of the offense was committed in the United States.

→ § 1838. Construction with other laws

This chapter shall not be construed to preempt or displace any other remedies, whether civil or criminal, provided by United States Federal, State, commonwealth, possession, or territory law for the misappropriation of a trade secret, or to affect the otherwise lawful disclosure of information by any Government employee under [section 552 of title 5](#) (commonly known as the Freedom of Information Act).

→ § 1839. Definitions

As used in this chapter--

(1) the term “foreign instrumentality” means any agency, bureau, ministry, component, institution, association, or any legal, commercial, or business organization, corporation, firm, or entity that is substantially owned, controlled, sponsored, commanded, managed, or dominated by a foreign government;

(2) the term “foreign agent” means any officer, employee, proxy, servant, delegate, or representative of a foreign government;

(3) the term “trade secret” means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if--

(A) the owner thereof has taken reasonable measures to keep such information secret; and

(B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public; and

(4) the term “owner”, with respect to a trade secret, means the person or entity in whom or in which rightful legal or equitable title to, or license in, the trade secret is reposed.

END OF DOCUMENT



[Code of Federal Regulations](#)

[Title 16. Commercial Practices](#)

[Chapter I. Federal Trade Commission](#)

[Subchapter J. Rules Concerning Unfair Methods of Competition \(Refs & Annos\)](#)

[Part 910. Non-Compete Clauses \(Refs & Annos\)](#)

§ 910.1. Definitions

As used in this part:

Business entity means a partnership, corporation, association, limited liability company, or other legal entity, or a division or subsidiary thereof.

Employment means work for a person.

Non-compete clause means:

(1) A term or condition of employment that prohibits a worker from, penalizes a worker for, or functions to prevent a worker from:

(i) Seeking or accepting work in the United States with a different person where such work would begin after the conclusion of the employment that includes the term or condition; or

(ii) Operating a business in the United States after the conclusion of the employment that includes the term or condition.

(2) For the purposes of this part, term or condition of employment includes, but is not limited to, a contractual term or workplace policy, whether written or oral.

Officer means a president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any natural person routinely performing corresponding functions with respect to any business entity whether incorporated or unincorporated.

Person means any natural person, partnership, corporation, association, or other legal entity within the Commission's jurisdiction, including any person acting under color or authority of State law.

Policy-making authority means final authority to make policy decisions that control significant aspects of a business entity or common enterprise and does not include authority limited to advising or exerting influence over such policy decisions or having final authority to make policy decisions for only a subsidiary of or affiliate of a common enterprise.

Policy-making position means a business entity's president, chief executive officer or the equivalent, any other officer of a business entity who has policy-making authority, or any other natural person who has policy-making authority for the business entity similar to an officer with policy-making authority. An officer of a subsidiary or affiliate of a business entity that is part of a common enterprise who has policy-making authority for the common enterprise may be deemed to have a policy-making position for purposes of this paragraph. A natural person who does not have policy-making authority over a common enterprise may not be deemed to have a policy-making position even if the person has policy-making authority over a subsidiary or affiliate of a business entity that is part of the common enterprise.

Preceding year means a person's choice among the following time periods: the most recent 52-week year, the most recent calendar year, the most recent fiscal year, or the most recent anniversary of hire year.

Senior executive means a worker who:

(1) Was in a policy-making position; and

(2) Received from a person for the employment:

(i) Total annual compensation of at least \$151,164 in the preceding year; or

(ii) Total compensation of at least \$151,164 when annualized if the worker was employed during only part of the preceding year; or

(iii) Total compensation of at least \$151,164 when annualized in the preceding year prior to the worker's departure if the worker departed from employment prior to the preceding year and the worker is subject to a non-compete clause.

Total annual compensation is based on the worker's earnings over the preceding year. Total annual compensation may include salary, commissions, nondiscretionary bonuses and other nondiscretionary compensation earned during that 52-week period. Total annual compensation does not include board, lodging and other facilities as defined in [29 CFR 541.606](#), and does not include payments for medical insurance, payments for life insurance, contributions to retirement plans and the cost of other similar fringe benefits.

Worker means a natural person who works or who previously worked, whether paid or unpaid, without regard to the worker's title or the worker's status under any other State or Federal laws, including, but not limited to, whether the worker is an employee, independent contractor, extern, intern, volunteer, apprentice, or a sole proprietor who provides a service to a person. The term worker includes a natural person who works for a franchisee or franchisor, but does not include a franchisee in the context of a franchisee-franchisor relationship.

§ 910.2. Unfair methods of competition

(a) Unfair methods of competition—

(1) Workers other than senior executives. With respect to a worker other than a senior executive, it is an unfair method of competition for a person:

(i) To enter into or attempt to enter into a non-compete clause;

(ii) To enforce or attempt to enforce a non-compete clause; or

(iii) To represent that the worker is subject to a non-compete clause.

(2) Senior executives. With respect to a senior executive, it is an unfair method of competition for a person:

(i) To enter into or attempt to enter into a non-compete clause;

(ii) To enforce or attempt to enforce a non-compete clause entered into after the effective date; or

(iii) To represent that the senior executive is subject to a non-compete clause, where the non-compete clause was entered into after the effective date.

(b) Notice requirement for existing non-compete clauses—

(1) Notice required. For each existing non-compete clause that it is an unfair method of competition to enforce or attempt to enforce under paragraph (a)(1)(ii) of this section, the person who entered into the non-compete clause with

the worker must provide clear and conspicuous notice to the worker by the effective date that the worker's non-compete clause will not be, and cannot legally be, enforced against the worker.

(2) Form of notice. The notice to the worker required by paragraph (b)(1) of this section must:

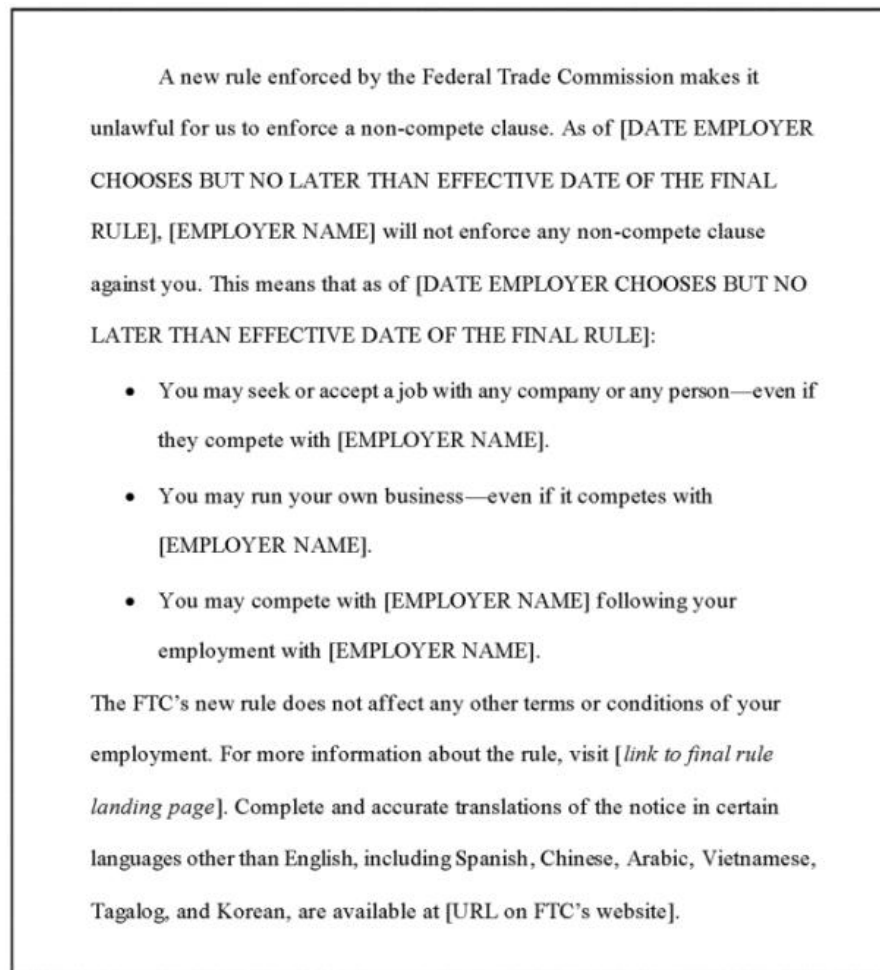
(i) Identify the person who entered into the non-compete clause with the worker;

(ii) Be on paper delivered by hand to the worker, or by mail at the worker's last known personal street address, or by email at an email address belonging to the worker, including the worker's current work email address or last known personal email address, or by text message at a mobile telephone number belonging to the worker.

(3) Exception. If a person that is required to provide notice under paragraph (b)(1) of this section has no record of a street address, email address, or mobile telephone number, such person is exempt from the notice requirement in paragraph (b)(1) of this section with respect to such worker.

(4) Model language. For purposes of paragraph (b)(1) of this section, the following model language constitutes notice to the worker that the worker's non-compete clause cannot legally be enforced and will not be enforced against the worker.

Figure 1 to Paragraph (b)(4)—Model Language



(5) Safe harbor. A person complies with the requirement in paragraph (b)(1) of this section if the person provides notice to a worker pursuant to paragraph (b)(4) of this section.

(6) Optional notice in additional languages. In addition to providing the notice required in paragraph (b)(1) of this section in English, a person is permitted to provide such notice in a language (or in languages) other than English or to include internet links to translations in additional languages. If providing optional notice under this paragraph (b)(6), a person may use any Commission-provided translation of the model language in paragraph (b)(4) of this section.

§ 910.3. Exceptions

(a) Bona fide sales of business. The requirements of this part shall not apply to a non-compete clause that is entered into by a person pursuant to a bona fide sale of a business entity, of the person's ownership interest in a business entity, or of all or substantially all of a business entity's operating assets.

(b) Existing causes of action. The requirements of this part do not apply where a cause of action related to a non-compete clause accrued prior to the effective date.

(c) Good faith. It is not an unfair method of competition to enforce or attempt to enforce a non-compete clause or to make representations about a non-compete clause where a person has a good-faith basis to believe that this part is inapplicable.

§ 910.24. Relation to State laws and preservation of State authority and private rights of action.

(a) This part will not be construed to annul, or exempt any person from complying with any State statute, regulation, order, or interpretation applicable to a non-compete clause, including, but not limited to, State antitrust and consumer protection laws and State common law, except that this part supersedes such laws to the extent, and only to the extent, that such laws would otherwise permit or authorize a person to engage in conduct that is an unfair method of competition under § 910.2(a) or conflict with the notice requirement in § 910.2(b).

(b) Except with respect to laws superseded under paragraph (a) of this section, no provision of this part shall be construed as altering, limiting, or affecting the authority of a State attorney general or any other regulatory or enforcement agency or entity or the rights of a person to bring a claim or regulatory action arising under any State statute, regulation, order, or interpretation, including, but not limited to, State antitrust and consumer protection laws and State common law.

§ 910.5. Severability

If any provision of this part is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law and such invalidity shall not affect the application of the provision to other persons or circumstances or the validity or application of other provisions. If any provision or application of this part is held to be invalid or unenforceable, the provision or application shall be severable from this part and shall not affect the remainder thereof.

§ 910.6. Effective Date

This part is effective September 4, 2024.