

Why GAO Did This Study

NCAs are provisions in employment contracts that can restrict workers from seeking employment with a competitor. Employers historically have applied NCAs to highly skilled workers and executives with access to proprietary information, such as trade secrets. NCAs generally are governed by state law. Questions have been raised about employers' use of NCAs, and their effects on lower-wage workers who may not have access to protected proprietary information.

GAO was asked to review the use and effects of NCAs. This report examines (1) the prevalence of NCAs, including for various types of workers; (2) what factors influence employers' and employees' decisions to enter into NCAs; (3) the effects of NCAs on the workforce and firms; and (4) steps states have taken to regulate NCAs.

GAO reviewed empirical studies on the prevalence and economic effects of NCAs. GAO also conducted a nongeneralizable survey of private sector employers on the reasons they use and enforce NCAs; 446 employers responded to the survey. GAO conducted a separate survey of state attorney general offices on state statutes related to NCAs; 25 states and the District of Columbia responded. GAO also interviewed stakeholders, such as worker advocates, employer groups, and researchers, and reviewed relevant federal laws.

The Department of Justice and Federal Trade Commission (FTC) provided technical comments on this report, which GAO incorporated, as appropriate. FTC also provided a comment letter with additional context from its research on NCAs.

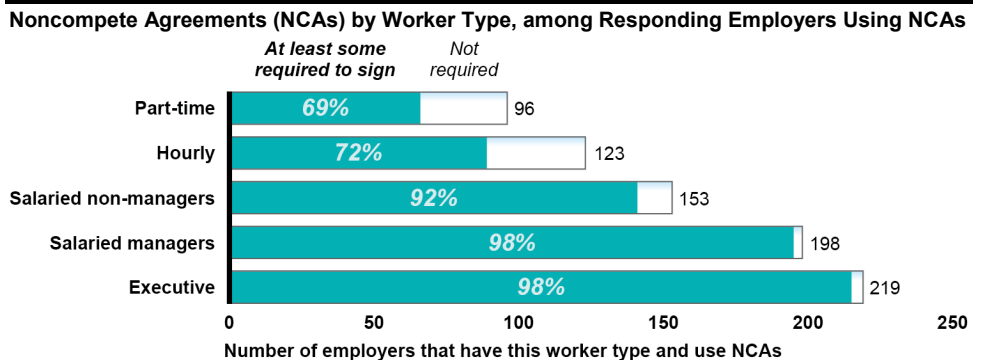
View [GAO-23-103785](#). For more information, contact Thomas Costa at (202) 512-4769 or costat@gao.gov.

NONCOMPETE AGREEMENTS

Use Is Widespread to Protect Business' Stated Interests, Restricts Job Mobility, and May Affect Wages

What GAO Found

Two recent nationally representative studies GAO reviewed estimated that 18 percent of workers were subject to noncompete agreements (NCAs), and one of the studies estimated that 38 percent of workers had been subject to an NCA at some time in their careers. Over half of the 446 private sector employers responding to GAO's survey reported that at least some of their workers had NCAs. Studies and GAO's employer survey also found that different types of workers are required to sign NCAs, including executives and hourly workers. For example, over 70 percent of respondents that use NCAs and that employed hourly workers used NCAs for at least some of them (see fig.).



Source: GAO analysis of nongeneralizable survey of private sector employers conducted in 2022. | GAO-23-103785

Employers GAO surveyed most often reported using NCAs to protect certain confidential information from competitors, regardless of worker type. However, several stakeholders GAO interviewed said that lower-wage workers generally do not have access to such information. Evidence suggests that workers who sign NCAs often do so as a condition of employment. Evidence also suggests that few workers who sign NCAs negotiate the terms, because they are unaware of what NCAs are, they want the job regardless, or the NCA is introduced after a job is accepted. Most surveyed employers reported rarely or never enforcing NCAs in the past 5 years. Employers that reported enforcing NCAs reported doing so for all worker types, though most often for executives and managers.

Studies GAO reviewed found that NCAs restrict job mobility, and may reduce wages and new firm creation. Two of these studies found that even when NCAs are not legally enforceable in a state, NCAs reduce job mobility and workers with NCAs are less likely to search for new jobs. Studies also found that NCAs lower workers' earnings, on average, though certain groups like executives may experience mixed effects. In addition, studies found that NCAs may discourage workers from starting new firms.

Of the 26 attorney general offices that responded to GAO's survey, 6 reported not having NCA-related statutes, 3 reported a statute that generally allows NCAs, and one reported a statute that generally does not allow NCAs. In addition, 16 reported a statute that allows NCAs, subject to certain provisions; for example, exempting workers who earn less than a certain wage from NCAs or requiring employers to provide written notice of an NCA to workers before they start a job.