

Live from Workplace Horizons 2025: Open Season on Restrictive Covenants? Protecting Your Company's Confidential Information in Uncertain Times

By Adrienne L. Conrad & Adriana R. Midence

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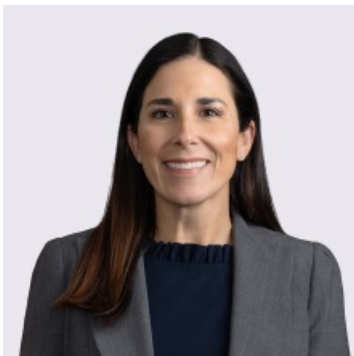
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Welcome to a special edition of We get work®, recorded live from Workplace Horizons 2025 in New York City, Jackson Lewis' annual Labor and Employment Law Conference. Over 500 representatives from 260 companies gathered together to share valuable insights and best practices on workplace law issues impacting their business today. Here's your personal invitation to get the insights from the conference, delivered directly to you.



Transcript

INTRO

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CONTENT

Alitia Faccione

Senior Director, Business Development

Adrienne and Adriana, welcome to Live from Workplace Horizons 2025 in our We get work® podcast series. Thank you for joining us today and taking time out of your busy conference schedule to come and talk to us this afternoon.

I'd like to introduce Adrienne Conrad and welcome you to the podcast, a principal in our San Diego office, and Adriana Midence, a principal in the Atlanta office of Jackson Lewis.

Adriana, why don't you start by telling us a little bit about yourself, what your practice is all about and what employers are really focused on these days.

Adriana Midence

Principal, Atlanta

Thanks for having us. As you mentioned, I am a principal in the Atlanta office, and I have been practicing law in Georgia for about 20 years. My practice is primarily in the restrictive covenant and trade secret space. A combination of advising clients on those types of agreements and things they can be doing proactively to protect their information, as well as handling the litigation when things go awry both on the plaintiff side and on the defense side.

What is driving the practice right now, and what we're going to talk a little bit about today, is what employers can and should be doing in light of all of the activity at the federal and state level on restrictive covenants that are hostile to restrictive covenants, and ways around that.

Faccone

All right, great. Adrienne, tell us a little bit about yourself.

Adrienne Conrad

Principal, San Diego

As you mentioned, I've been a principal in the San Diego office for almost eight years. Before that, I was in our Jacksonville, Florida, office for seven years. Like Adriana, I'm part of the group focused on restrictive covenant litigation, as well as the arbitration and trial groups.

Right now, in the restrictive covenant space, the majority of what I've been doing, particularly in California, we often don't get to the litigation part of it because you can't have your traditional non-competes or traditional non-solicitations. I've been doing a lot of cease and desist letters around what you can have, which are the confidentiality provisions, responding to cease and desist letters or sending them out on behalf of our client.

Faccone

Terrific, thank you. Adriana, you hinted at this – the title of your presentation is “Open Season on Restrictive Covenants and Really Protecting Your Client's Confidential Information.” So, can you share a little bit about what your presentation was about and what you shared with your audience here at Workplace Horizons?

Midence

Part of the presentation focused on a brief check-in – what is the state of the law, both at the federal level, but we're also seeing a lot of activity at the state level. Every state has a different approach to restrictive covenants and does different things, so we talked a little bit about that.

However, the main focus was on what employers can do separate from restrictive covenants. If it's hard to keep up with changes in the law or we're in a jurisdiction that's hostile, then what other things can we be doing to protect our trade secrets and our confidential information that's totally independent from that? Talking

through those strategies and really lessons learned that Adrienne and I have from our experience in litigating these cases and taking them to trial, like what are mistakes that we see clients make or missed opportunities? Hopefully, giving our attendees those lessons learned and things they can take back and implement today.

Faccone

Adrienne, from a legal perspective, what were some of the issues that were really important to cover today?

Conrad

The missed opportunities and mistakes that Adriana mentioned. Key point one being, what are your trade secrets? What confidential information should you be keeping protected, and when should you go after employees if they're leaving the company and taking that information? What we find is that many times, employers are completely confused about what they should be protecting.

I always tell this story because I feel like it's a really good explanation of it, which is in Florida, where you can have non-competes, non-solicitations and, of course, confidentiality provisions—because you have the non-competes, that's all the employers were focused on. It was easy if the employee left, went one block down the street and opened up shop, then it was competing. That was what they focused on—there is a non-compete, and we can shut them down. Then, I would say, 'Hey, we can also add that they're violating trade secret laws, what are your trade secrets?' They would say, 'We don't know, just go after the non-compete.' Then, when I moved to California, I thought, 'Okay, California, what you can protect is a trade secret, so California employers should know what their trade secrets are.' They don't.

So, that's one of the things that we've talked about in our presentation, which was how important it is to identify what your trade secrets are. As Adriana mentioned, with all the changes at the federal and state levels, they're all moving in the direction of California. Eventually, employers are really going to have to focus on those confidential trade secrets and information, and how they protect them.

Faccone

One of the reasons we have this conference is that there's an awful lot of law for employers to keep track of every single day. There has been a tremendous amount of activity in the restrictive covenant space over the past year. Between Workplace Horizons 2024 and 2025, Adriana, can you tell us a little bit about some of those significant changes and where the focus really is right now?

Midence

We saw a lot of activity at the federal level last year, and that appears to be somewhat stalled for now. We are now seeing more aggressive behavior at the state level. At a 50,000-foot view, states are really focused on the threshold issues when requiring employees to execute restrictive covenants. So, are we talking about employees who make above a certain threshold? Are we talking about

employees who perform certain particular duties as opposed to somebody who is being paid by the hour and doesn't perform a job with a specialized skill? Really, states tend to focus on those bigger threshold issues. What are we giving employees in exchange for these agreements? Are we making sure that we are limiting the enforceability of these agreements to employees who can truly hurt the employer when they leave? Would you agree that this is the consistent trend at the state level? It looks different in every state, which is part of the headache for employers, but generally, that's how we would describe it.

Conrad

I would.

Faccone

Adrienne, you talked about knowing what your confidential information is in the first place. I'm assuming that's one of the ways that the Jackson Lewis team can really help employers get a handle on what they have to grapple with. What would you say are some key takeaways that you would give to our listening audience today?

Conrad

Key takeaways would be that, because of all of the different changes at the state level, even though the FTC rule, which would be effectively banning all non-compete and anything that acts like a non-compete, is currently set aside, employers are grappling with what to do now. If it goes into effect, or if all these states now start banning non-compete, what else do we have to protect our information? That's one of the things that we're always talking through with California employers because they think they can't have anything to protect themselves. That really isn't true.

You can still have a non-disclosure or confidentiality provision. You can't be overbroad or overreach to the point where it's treated as effectively a non-compete. We can have those provisions. You also have things like state and federal laws that protect trade secret information. You also have tort actions that can help protect the employer.

The key takeaways are that there are still protections, and you have to be careful about how you implement them. Get an attorney involved to help you through the process and ensure that you review those agreements on a regular basis because of all of the frequent changes in the law.

Faccone

Thank you, Adrienne.

Adriana, what else might you add to that list of key takeaways if you had to share some insights with our audience here at the conference and on the other end of our microphone?

Midence

That was great advice. One of the big takeaways, hopefully, from our presentation was don't wait until you have a crisis. There is so much that employers can do on the front end, like identifying their trade secrets, working with IT to protect the trade secrets and having a plan in place when employees leave, so that you know what your action plan is. If you have a situation where an employee has left and taken your information, call us; there is a lot we can do to help. However, there's so much employers can be doing on the front end to prevent that scenario, so don't wait until you have a crisis. Implement measures now to get ahead of it.

Conrad

On top of that, even if there are some things they haven't done in the forefront to make sure that they get ahead of it, when the employee does walk out the door, please get involved with outside counsel as soon as possible to grab those laptops. Don't issue them to another employee, and have them start because you are now losing valuable information. You can check their history and see how they were using their emails and whether or not they were emailing information to themselves.

There's valuable information that can help us be able to help the employer when it goes to litigation. Even if you don't have an inkling at the beginning of what the employee was doing, if you grab that information, you may find out that they were setting it up before they even left. Then, you have a breach of fiduciary duty or a breach of loyalty, and can add on to the cause of action as well.

Faccone

All things you definitely want to avoid. We're hearing a lot about proactivity and process, and it sounds like you both are in agreement that in this particular area of the law, it's something else to consider as well.

Adrienne, Adriana, thank you so much for being with us today at We get work Live from Workplace Horizons and enjoy the rest of the conference.

OUTRO

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