

# **Covenants Not to Compete**

## **A primer on the debate and recent empirical evidence**

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Uniform Law Commission



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- ***Noncompete***: Will not join or start a competitor

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- Worker “freedom-to-contract”



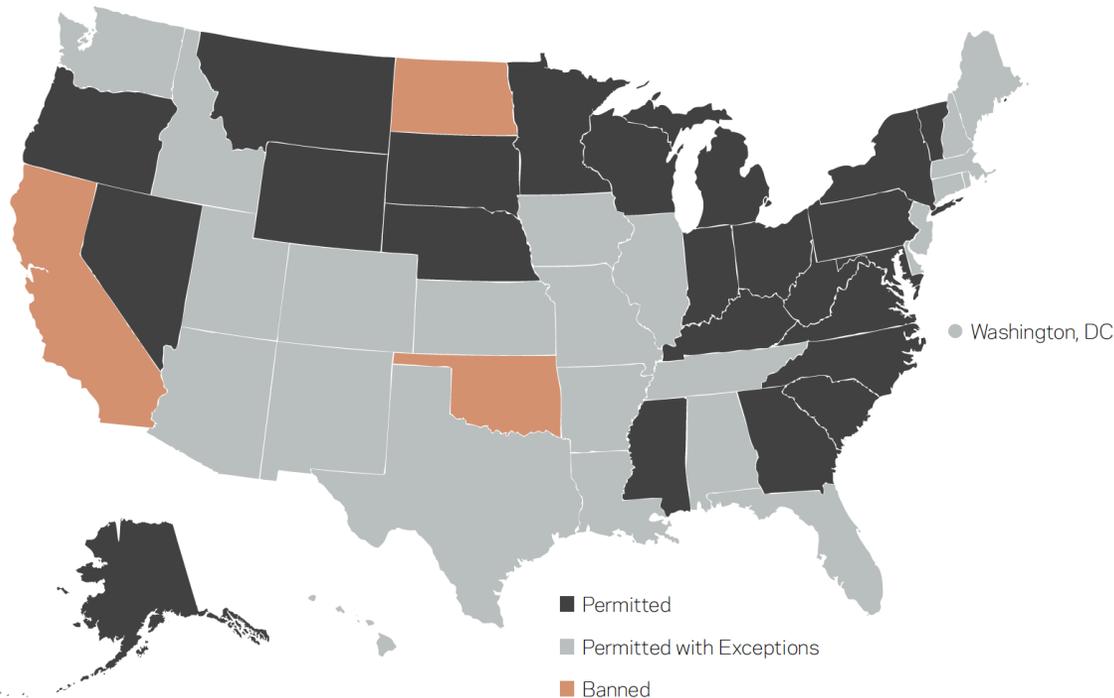
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## Where does the evidence point so far?



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## Not Addressed Today:

- Externalities
- High-Tech, Physicians, Executives
- Effects on firms: hiring, performance,...
- Effects on investment by workers/firms



# Where are noncompetes used?

- **16-28% of US labor force** (Starr et al. 2019, Colvin and Shierholz 2019, Schwab and Starr 2019, Rothstein and Starr 2020, Balasubramanian et al. 2020, Krueger and Posner 2019)
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- **More frequently found in high paying, more technical jobs:**
  - *Executives*: 70-80% (Schwab and Thomas 2006, Bishara et al. 2015, Garmaise 2009)
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- **Still found in low-paying, less technical jobs:**
  - *Earning <\$40k*: 14% (Starr et al. 2019)
  - *Hair stylists*: 30% of hair stylists (Johnson and Lipsitz 2020)
  - *Independent contractors*: 10% (Schwab and Starr 2020)

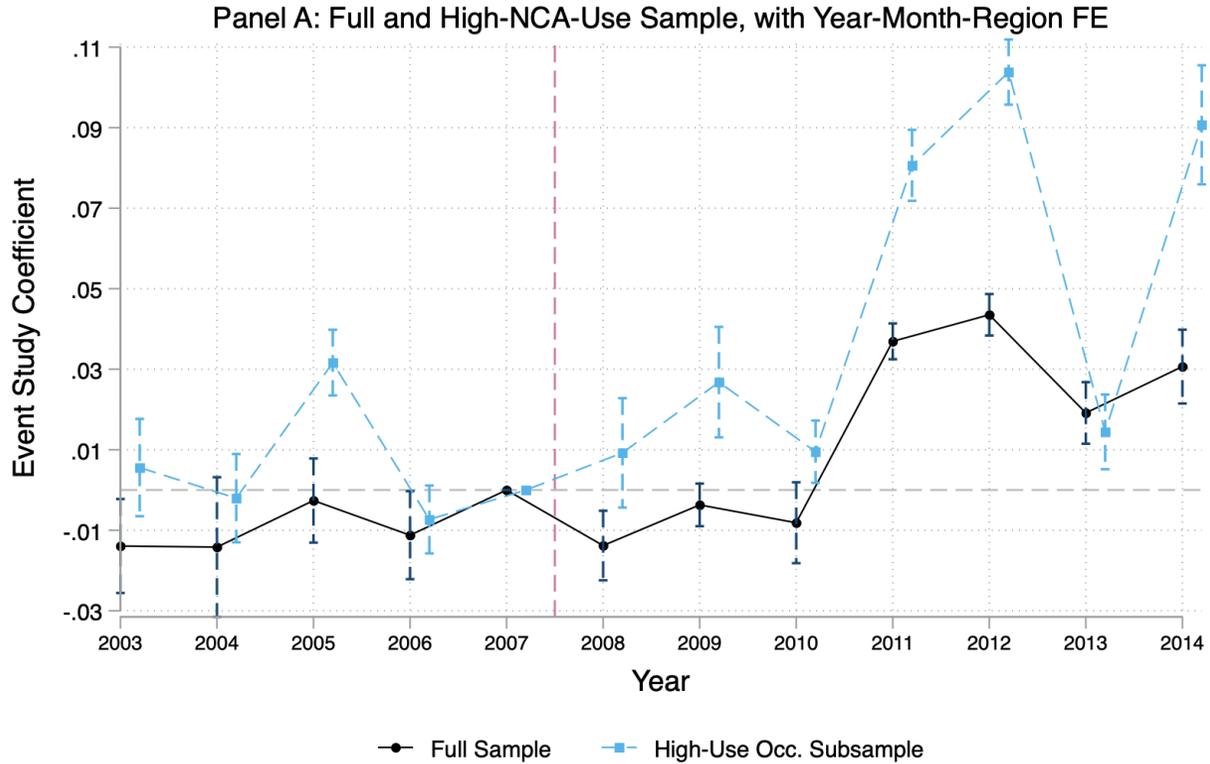
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- **53% of CNC-bound workers are paid by the hour** (Lipsitz and Starr 2019)

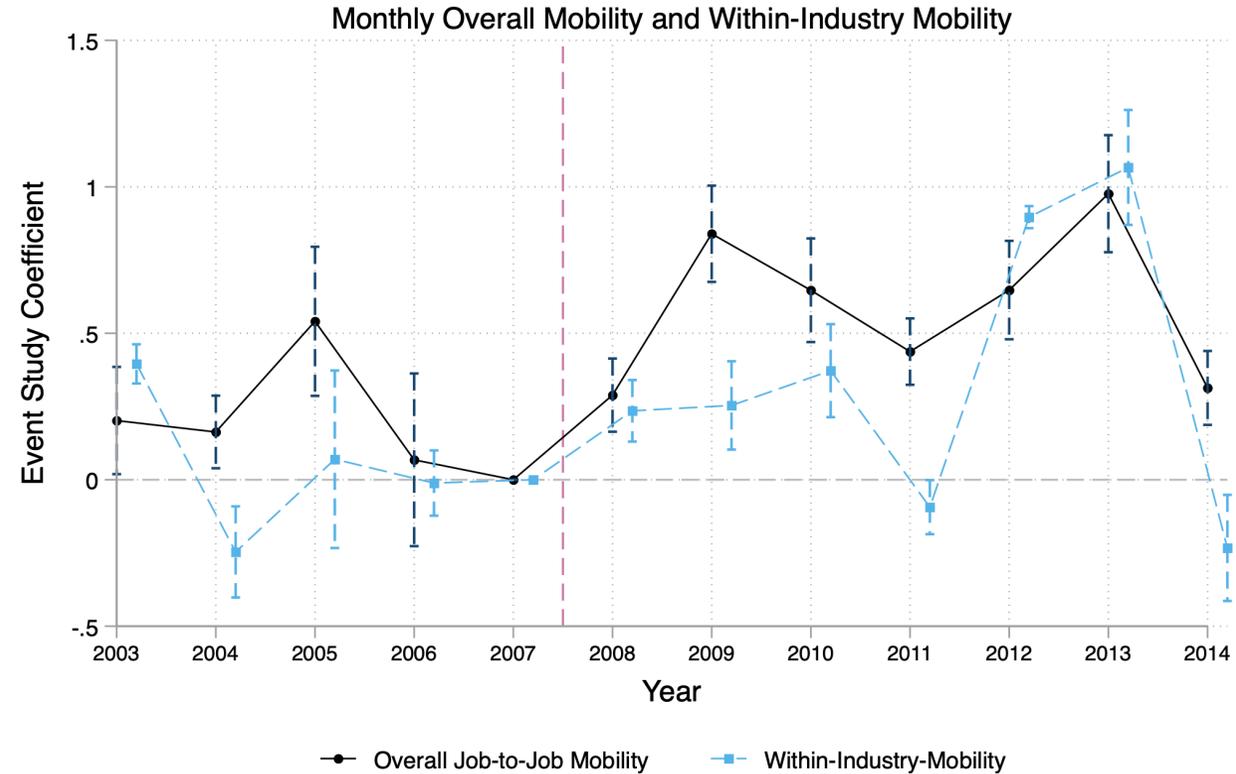
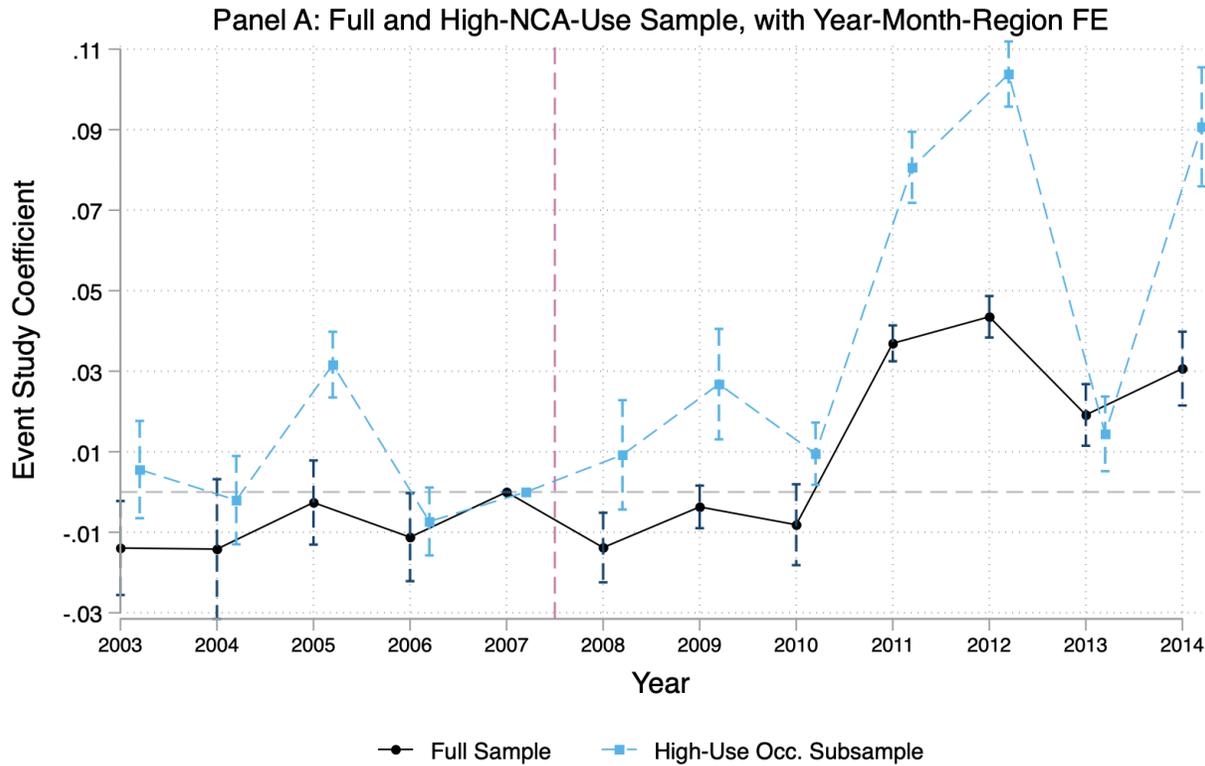


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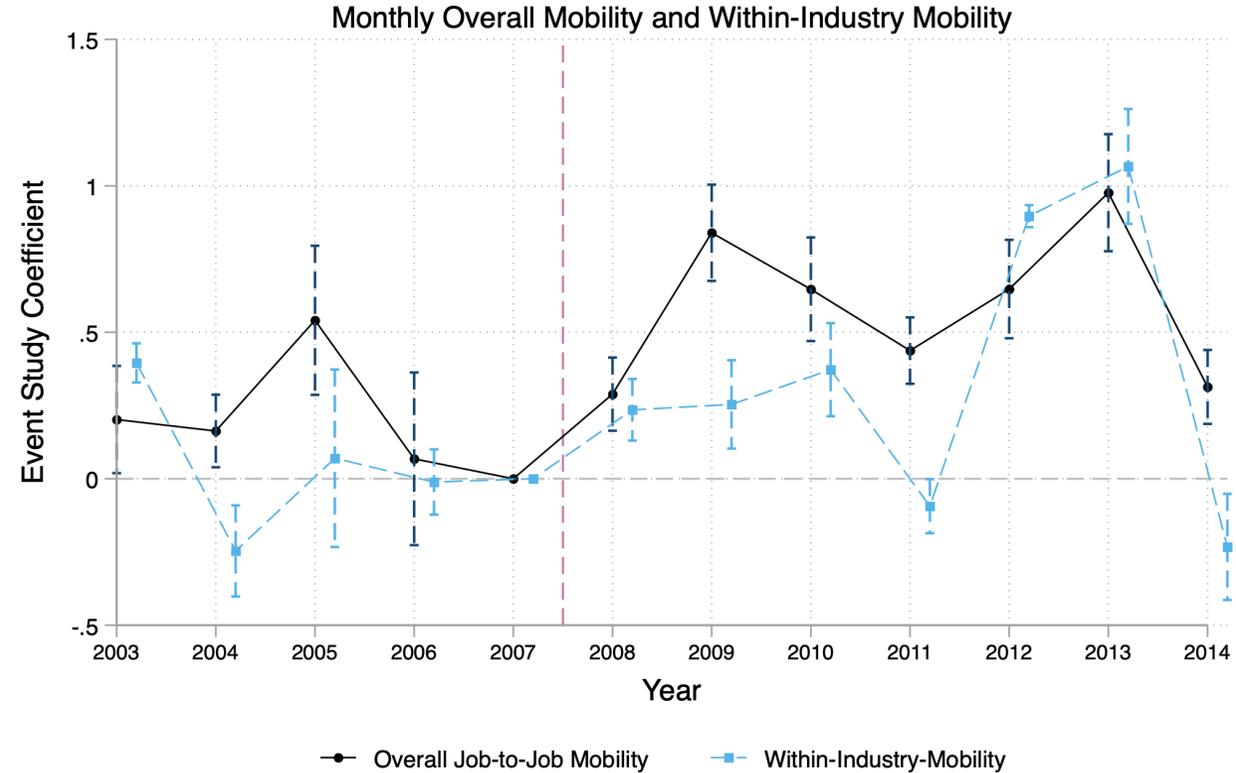
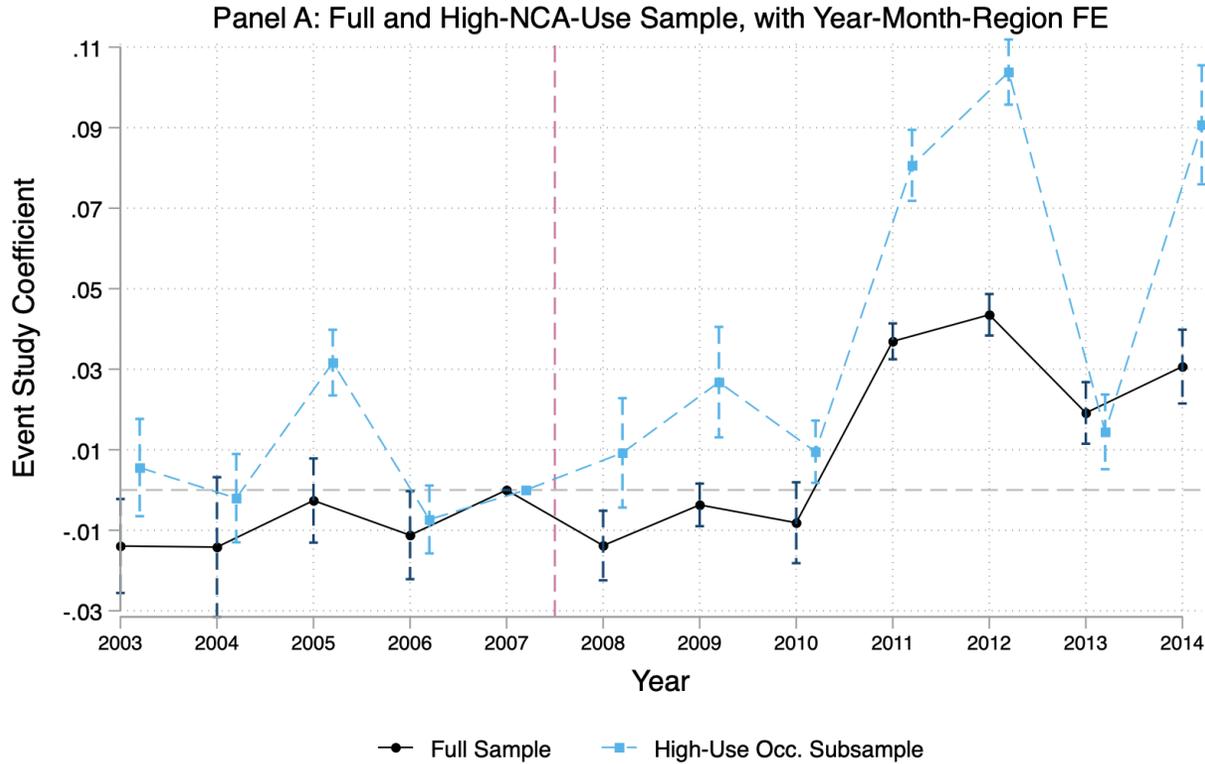
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- Positive wage effects across most worker characteristics (age, gender, education, occupation, industry)
- Higher “status” jobs, and more stable jobs (salaried)
- Policy Notes: Also included garden leave, early notice



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Table 7: The Noncompete Contracting Process

	(1) Distribution (%)	(2) % Negotiate
<i>Panel A: When did you first learn you would be asked to sign a noncompete?</i>		
Before Accepting Job Offer	60.8	11.6
After Accepting Job Offer	29.3	6.3
Before Promotion or Raise	2.2	30.8
Other or Cannot Remember	7.7	6.5
<i>Panel B: What did you do when asked to sign?</i>		
Signed without Reading	6.7	7.9
Read Quickly and Signed	31.2	7.1
Read Slowly and Signed	56.4	11.6
Consulted with Friends/Family	10.4	30.8
Consulted a Lawyer	7.9	48.6
Overall		10.1

Source: Starr et al. (2020), *Journal of Law and Economics*

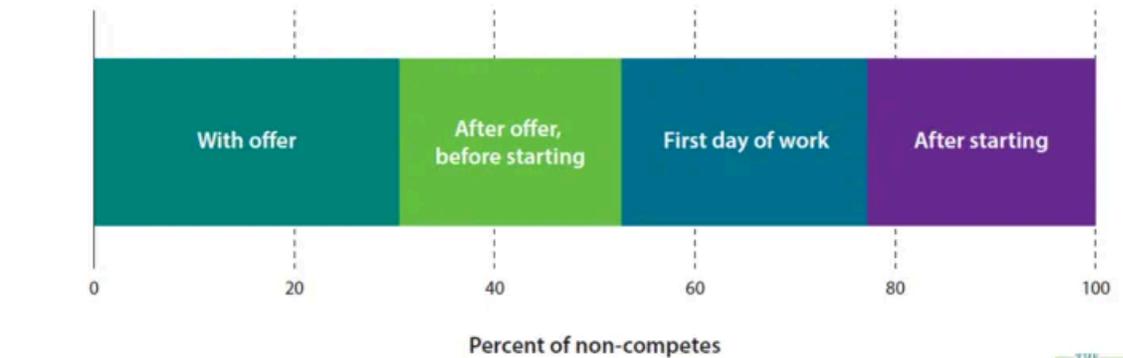
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Share of Non-Compete Agreements, by Time of Signing



Source: Marx 2011.

Note: Results are from a survey of the Institute of Electrical and Electronics Engineers with 1,029 respondents and restricted to workers who have signed a non-compete agreement.

Source: Marx (2011), *American Sociological Review*



# How does notice/lack of notice matter for workers?

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Table OB8: Direct Evidence on the Price of a Noncompete

	(1)	(2)	(3)
	<i>When did you first learn you would be asked to sign?</i>		<i>Overall</i>
	Before Accepting	After Accepting	
<i>Panel A: "What did your employer promise, either explicitly or implicitly, in exchange for asking you to sign a noncompete?"</i>			
Nothing	0.84	0.91	0.86
More Compensation	0.09	0.04	0.07
Job Security	0.08	0.04	0.07
More Training	0.07	0.04	0.06
More Trust by Employer	0.07	0.04	0.06
Better Working Conditions	0.05	0.03	0.04
More Responsibility	0.05	0.02	0.04
Promotion	0.03	0.03	0.03
More Access to Confidential Information	0.04	0.03	0.03
More Access to Clients/Lists	0.03	0.02	0.02
More Client Referrals	0.02	0.02	0.02
Other Benefits	0.01	0.01	0.01



Figure 9: Marginal Effect of Noncompetes over Tenure

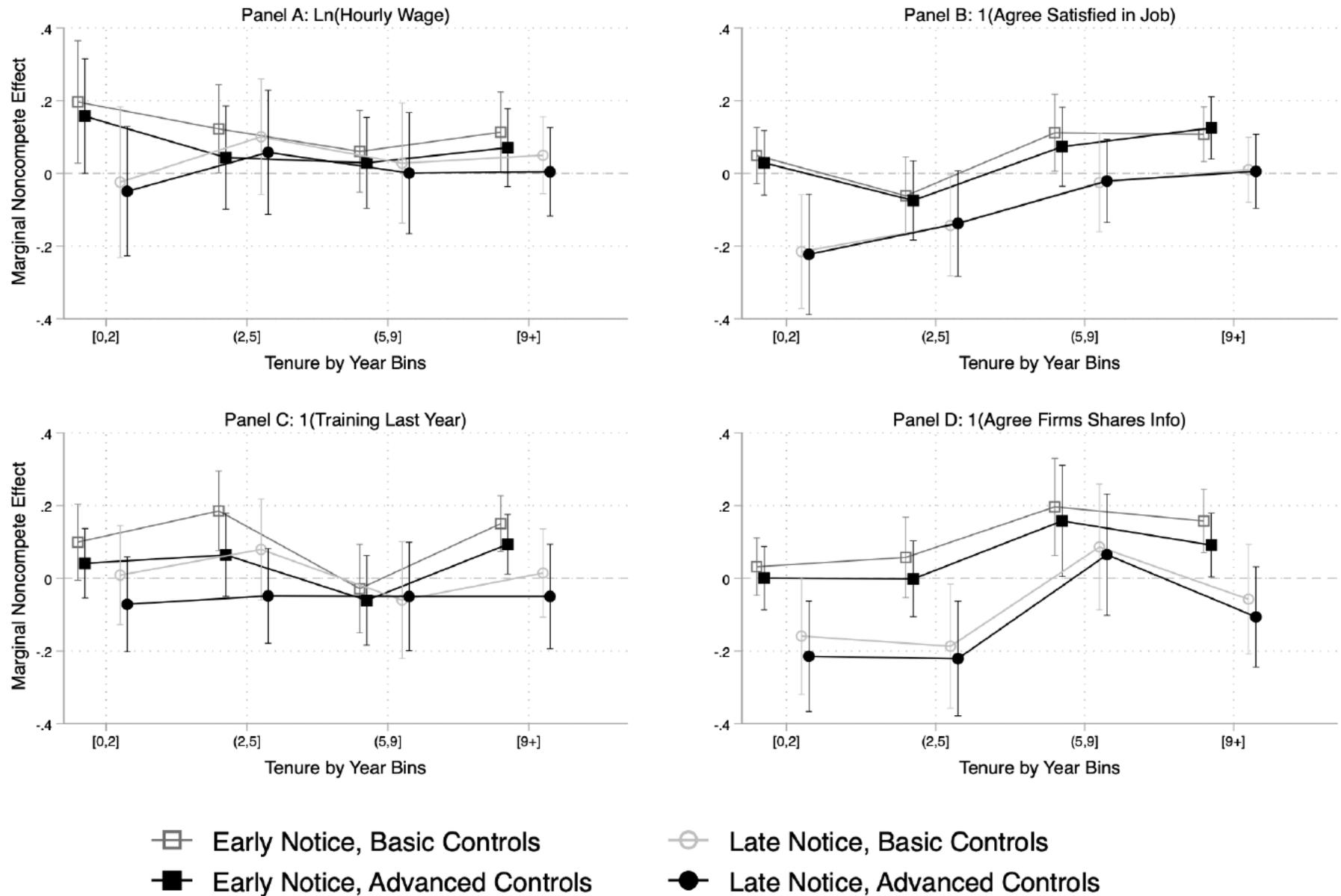
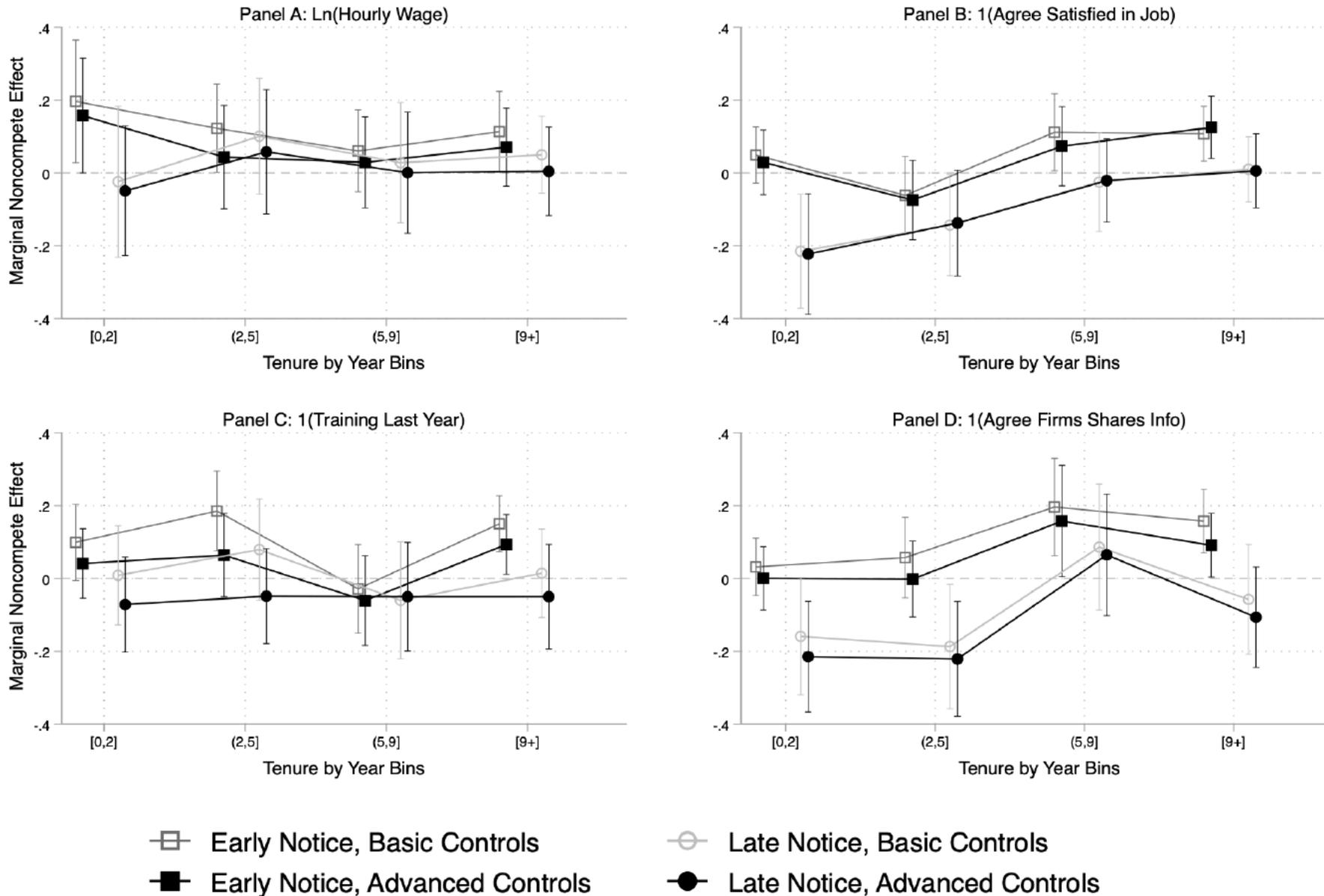




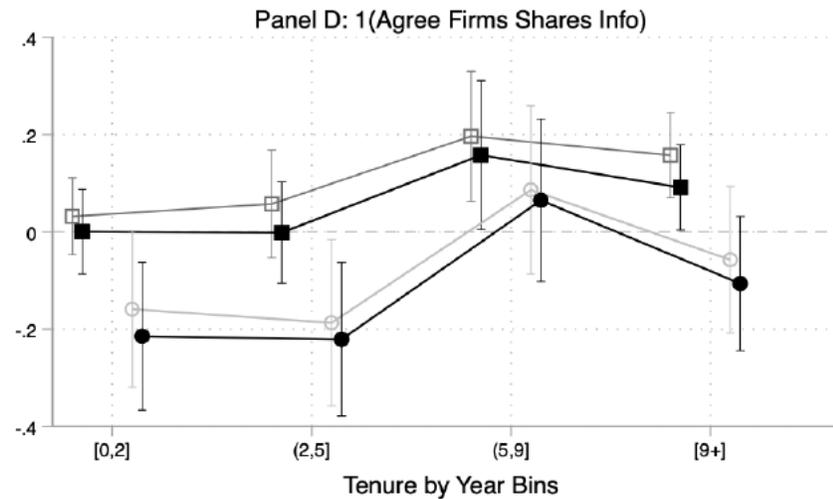
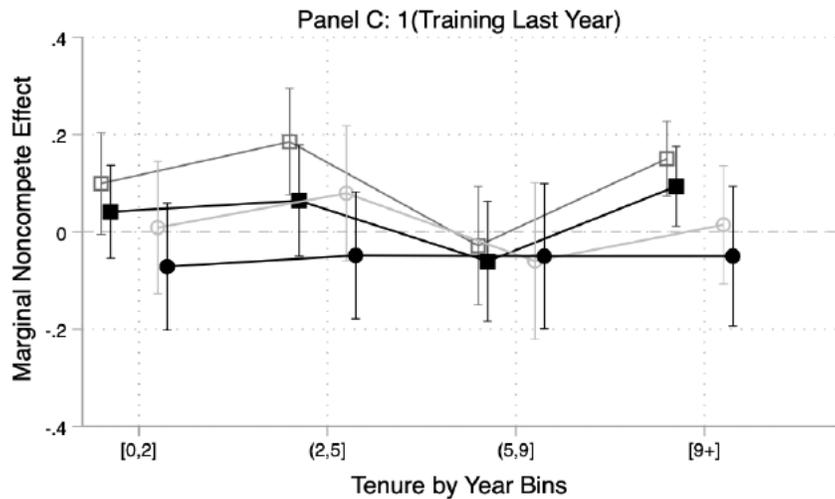
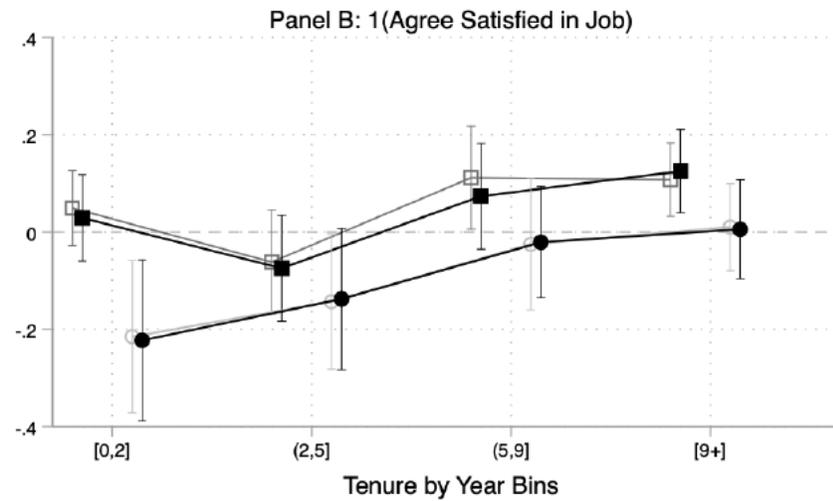
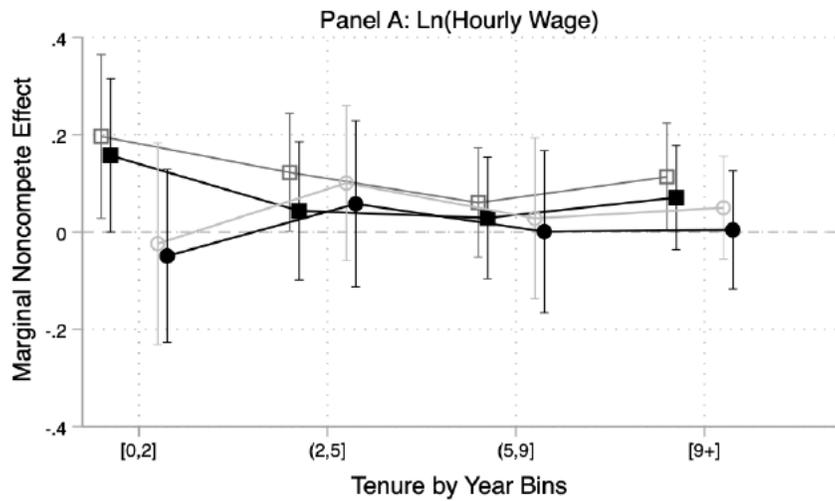
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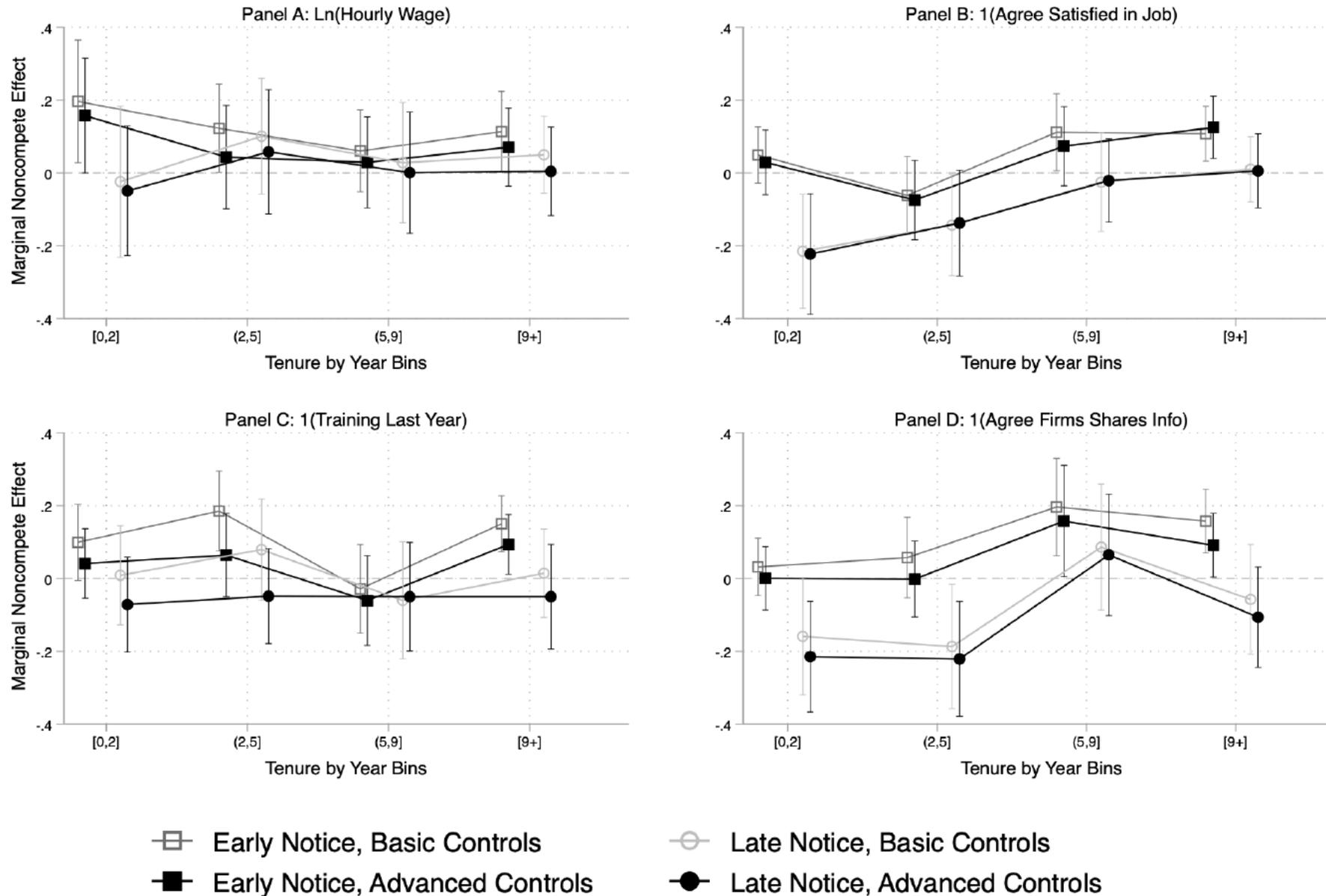


- Early Notice, Basic Controls
- Early Notice, Advanced Controls
- Late Notice, Basic Controls
- Late Notice, Advanced Controls

- **“Late-Notice Noncompetes”** not associated with any wage or training benefits, but lower job satisfaction.
- **“Early-Notice Noncompetes”** associated with higher initial wages, more training, higher job satisfaction.

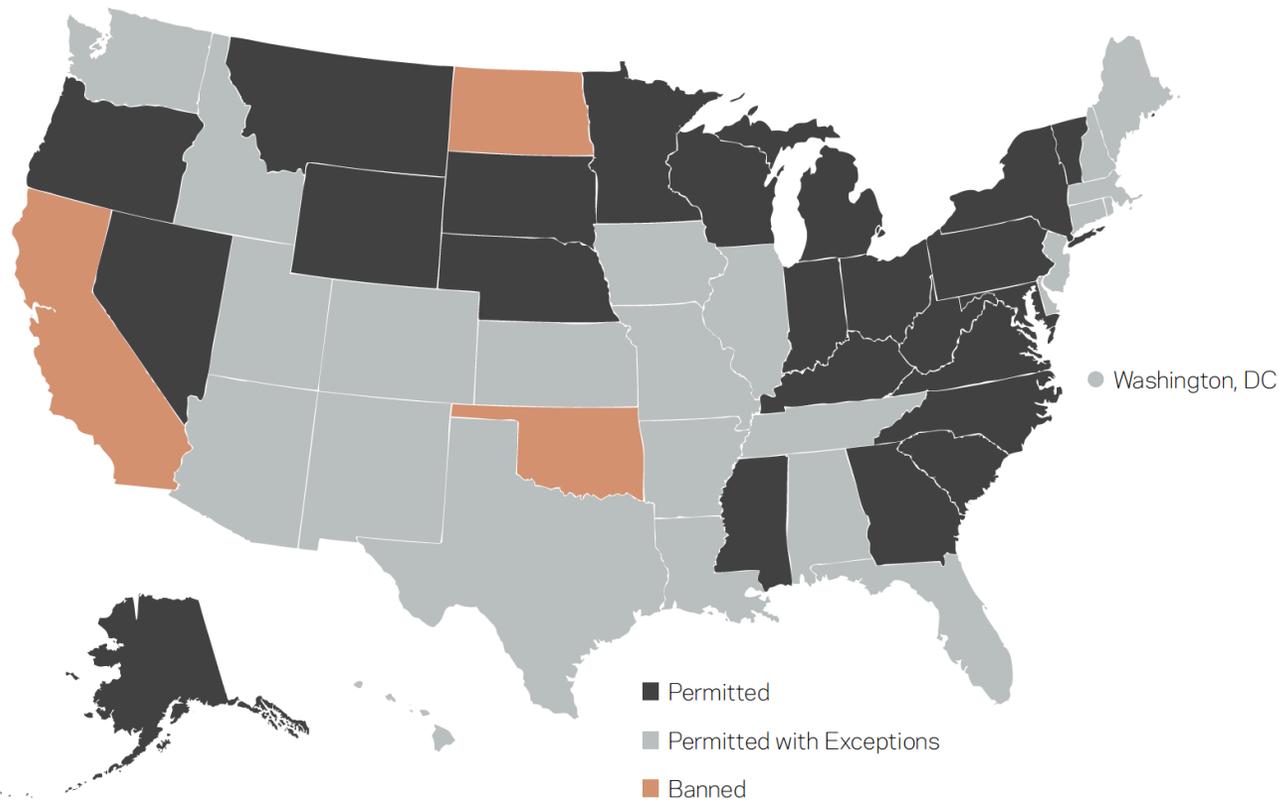


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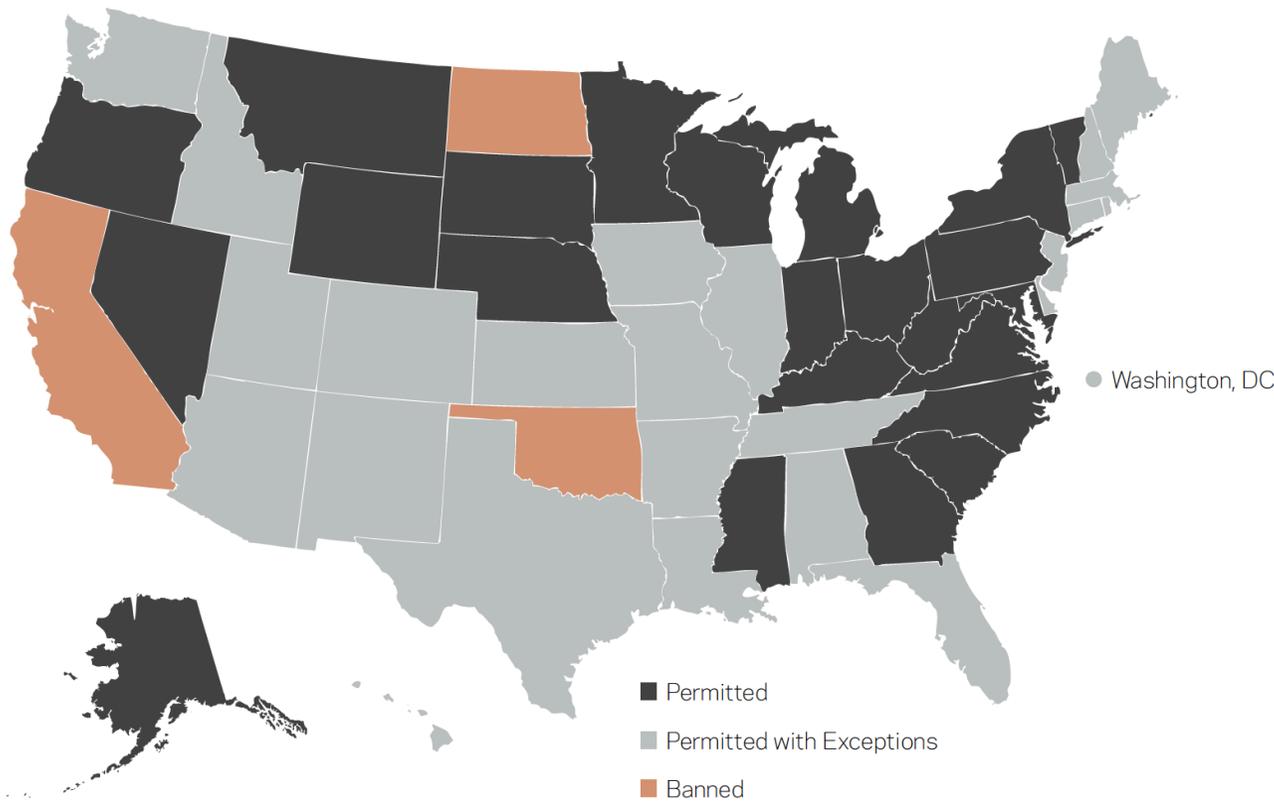
- **“Late-Notice Noncompetes”** not associated with any wage or training benefits, but lower job satisfaction.
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- **CAVEAT:** Wage effects reduced in higher enforcing states, regardless of timing.

# Unenforceable Noncompetes are Common



Source: Beck Reed Riden 50 State Non-compete Chart

# Unenforceable Noncompetes are Common



STATE (IN ORDER OF POPULATION SIZE)	SHARE OF WORKPLACES WHERE EMPLOYEES ARE SUBJECT TO NONCOMPETES	
	All employees	Any employees
<b>ALL</b>	31.8%	49.4%
<b>CALIFORNIA</b>	28.6%	45.1%
<b>TEXAS</b>	50.0%*	60.7%
<b>FLORIDA</b>	39.3%	46.4%
<b>NEW YORK</b>	21.7%	44.2%
<b>ILLINOIS</b>	14.3%*	50.0%
<b>PENNSYLVANIA</b>	31.1%	42.2%
<b>OHIO</b>	41.4%	66.7%*
<b>GEORGIA</b>	33.3%	51.4%
<b>NORTH CAROLINA</b>	29.0%	51.6%
<b>MICHIGAN</b>	37.9%	55.2%
<b>NEW JERSEY</b>	25.6%	48.8%
<b>VIRGINIA</b>	44.8%	64.3%

Colvin and Shierholz (2019)

See also Starr, Prescott, and Bishara “Noncompetes in the US Labor Force”

Source: Beck Reed Riden 50 State Non-compete Chart

# Unenforceable Noncompetes are Common





## Girls on the Run of Silicon Valley

**NON-COMPETE AGREEMENT:**

As a coach and volunteer for Girls on the Run of Silicon Valley, I agree to the following:

- 1.) I will not deliver the Girls on the Run program or any similar program unless I am working as an employee or volunteer of Girls on the Run.
- 2.) I may not create or help develop a program that has similar goals and structure to that of Girls on the Run International within a two-year period of my involvement with Girls on the Run.

■ Permitted with Exceptions  
 ■ Banned

See also Starr, Prescott, and Bishara "Noncompetes in the US Labor Force"

**PLACES WHERE EMPLOYEES  
 AND NONCOMPETES**

Any employees
49.4%
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**Table 5: Turning Down Job Offers**

	(1)	(2)	(3)
<i>Sample</i>	<i>All</i>	<i>States That Do Not Enforce Noncompetes</i>	<i>States That Enforce Noncompetes</i>
<i>Panel A: Was your noncompete a factor in your choice to turn down your offer from a competitor?</i>			
Yes	41.4%	37.5%	42.3%
<i>Panel B: If you received an offer from a competitor, would your noncompete be a factor in your choice to accept it?</i>			
Yes	47.6%	46.6%	47.8%
<i>Panel C: How important is your noncompete in determining if you leave for a competitor?</i>			
Not at all Important	9.0%	6.2%	9.5%
Very Unimportant	6.0%	7.4%	5.8%
Somewhat Unimportant	6.5%	5.3%	6.6%
Neither Important nor Unimportant	23.3%	26.4%	22.8%
Somewhat Important	21.3%	19.1%	21.6%
Very Important	17.5%	17.2%	17.5%
Extremely Important	16.5%	18.4%	16.3%
Somewhat or Very or Extremely Important	55.3%	54.7%	55.3%

Starr, Prescott, and Bishara (2020): “The Behavioral Effects of (Unenforceable) Contracts” *Journal of Law, Economics, and Organization*

# Do even unenforceable noncompetes chill employee mobility?

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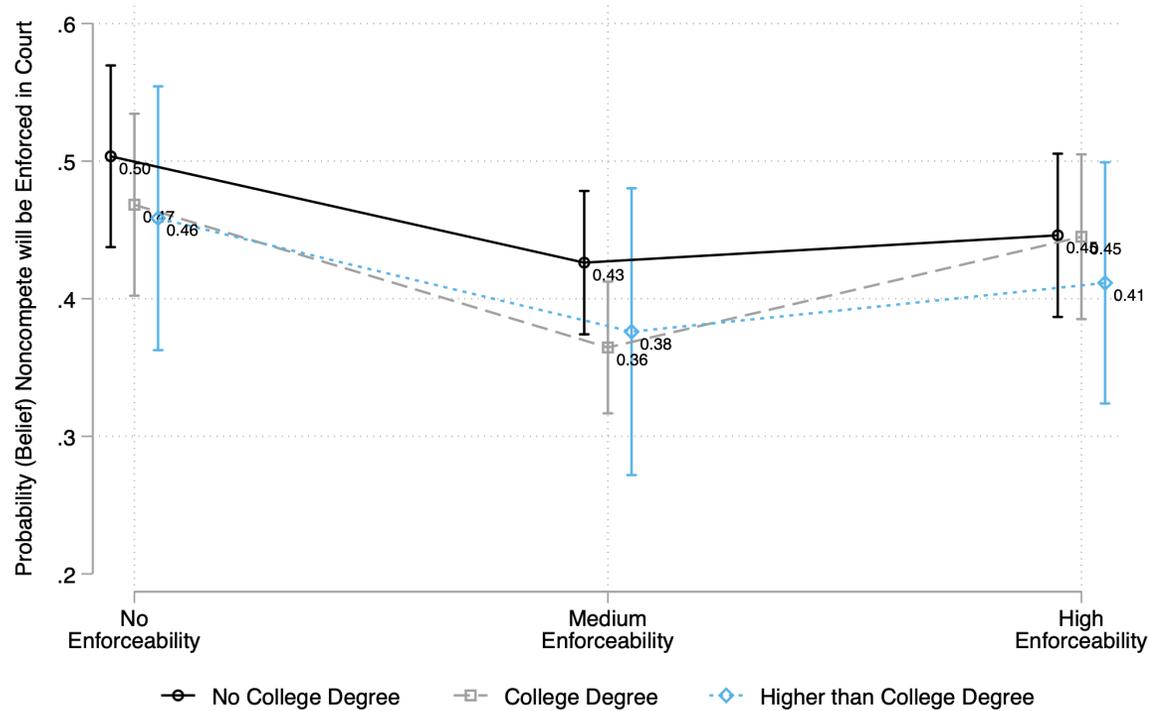
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Somewhat or Very or Extremely Important	55.3%	54.7%	55.3%

**Table 6: Why Do Some Turn Down Offers Because of the Noncompete But Not Others?**

<i>Dependent Variable: 1 (Noncompete a factor in turning down actual/hypothetical offer from competitor)</i>						
<i>Condition of offer:</i>	(1) <i>Employer is unaware of offer from competitor</i>	(2) <i>Employer is aware of offer from competitor</i>	(3) <i>Employer is aware of offer from competitor</i>	(4) <i>Hypothetical offer from competitor</i>	(5) <i>Hypothetical offer from competitor</i>	(6) <i>Hypothetical offer from competitor</i>
Reminded of Noncompete				0.407*** (0.074)		
1(Aware Employer Sued in Past)	0.158* (0.081)	0.160* (0.080)	0.185** (0.085)	0.132 (0.081)	0.081* (0.047)	0.081* (0.047)
Subjective P(Lawsuit)	0.293* (0.146)	0.288* (0.143)	0.248* (0.132)	0.170** (0.083)	0.236*** (0.062)	0.233*** (0.062)
Subjective P(Enforced)	0.321** (0.132)	0.324** (0.130)	0.283* (0.140)	0.090 (0.130)	0.353*** (0.085)	0.357*** (0.085)
Actual Enforceability		0.006 (0.015)	-0.067*** (0.021)	-0.060*** (0.022)		0.008 (0.009)
Observations	219	219	382	382	2261	2261
Basic Controls	Yes	Yes	Yes	Yes	Yes	Yes

Starr, Prescott, and Bishara (2020): "The Behavioral Effects of (Unenforceable) Contracts" *Journal of Law, Economics, and Organization*

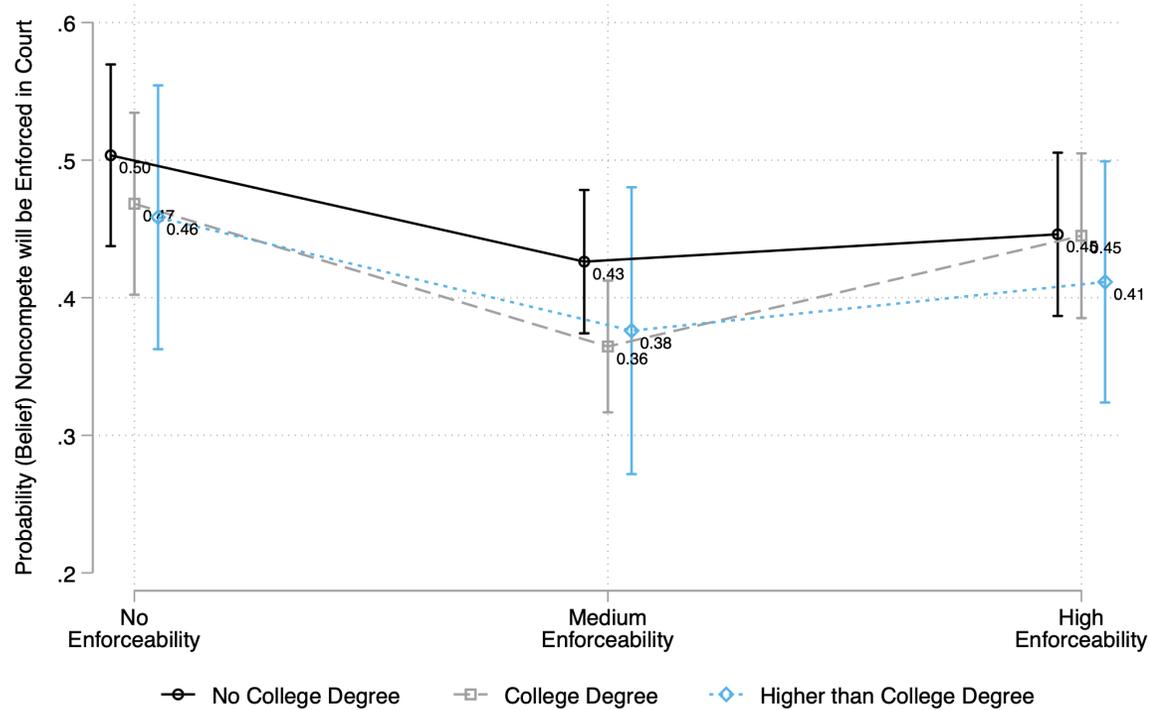
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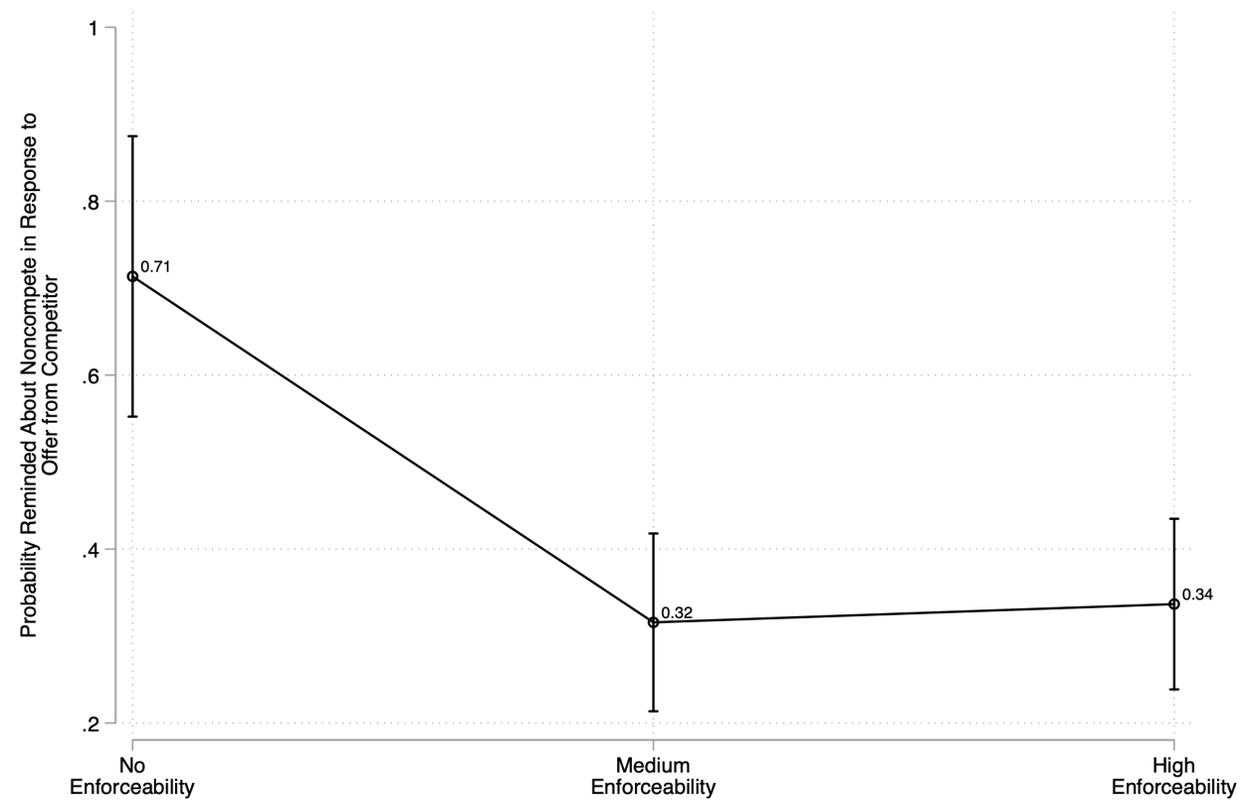
Sample limited to those affirmatively bound by a noncompete.

Prescott and Starr (2020): “Subjective Beliefs about Contract Enforceability”

# Workers Persistently Unaware of Law; More Likely Reminded about Unenforceable CNCs



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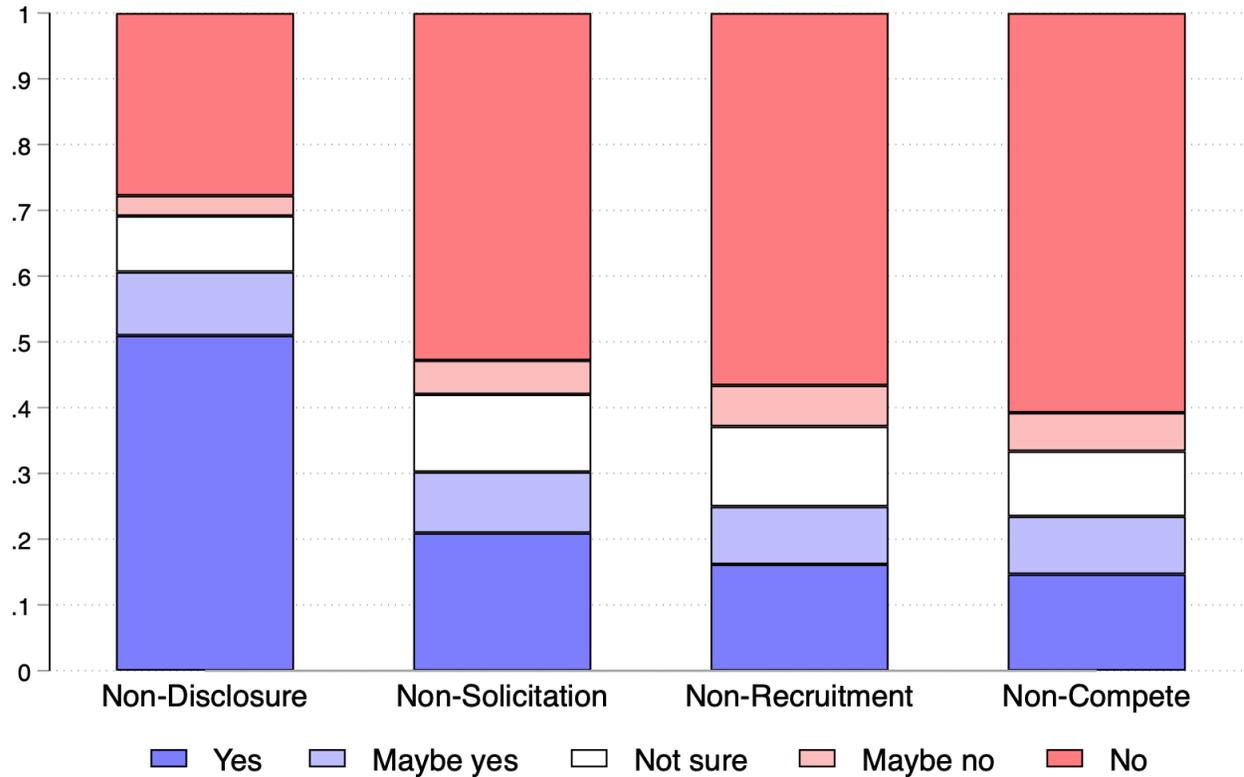


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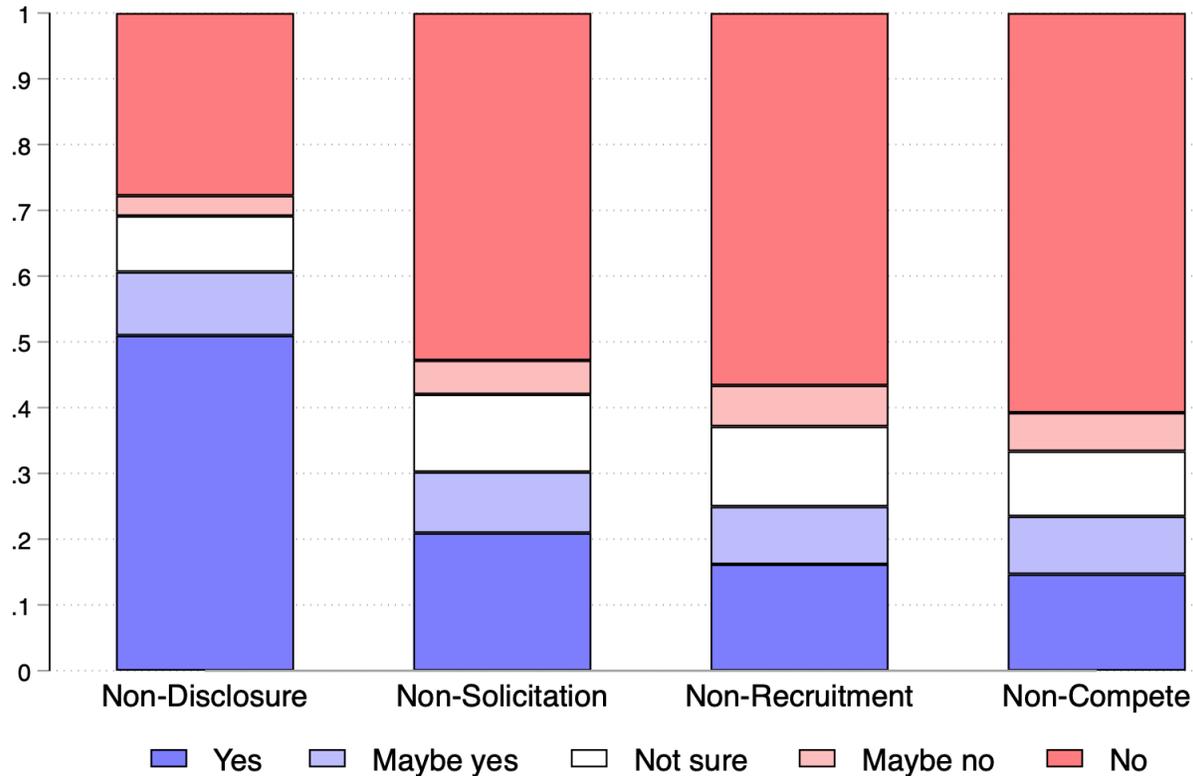
Individual-Level Data (N=27k)



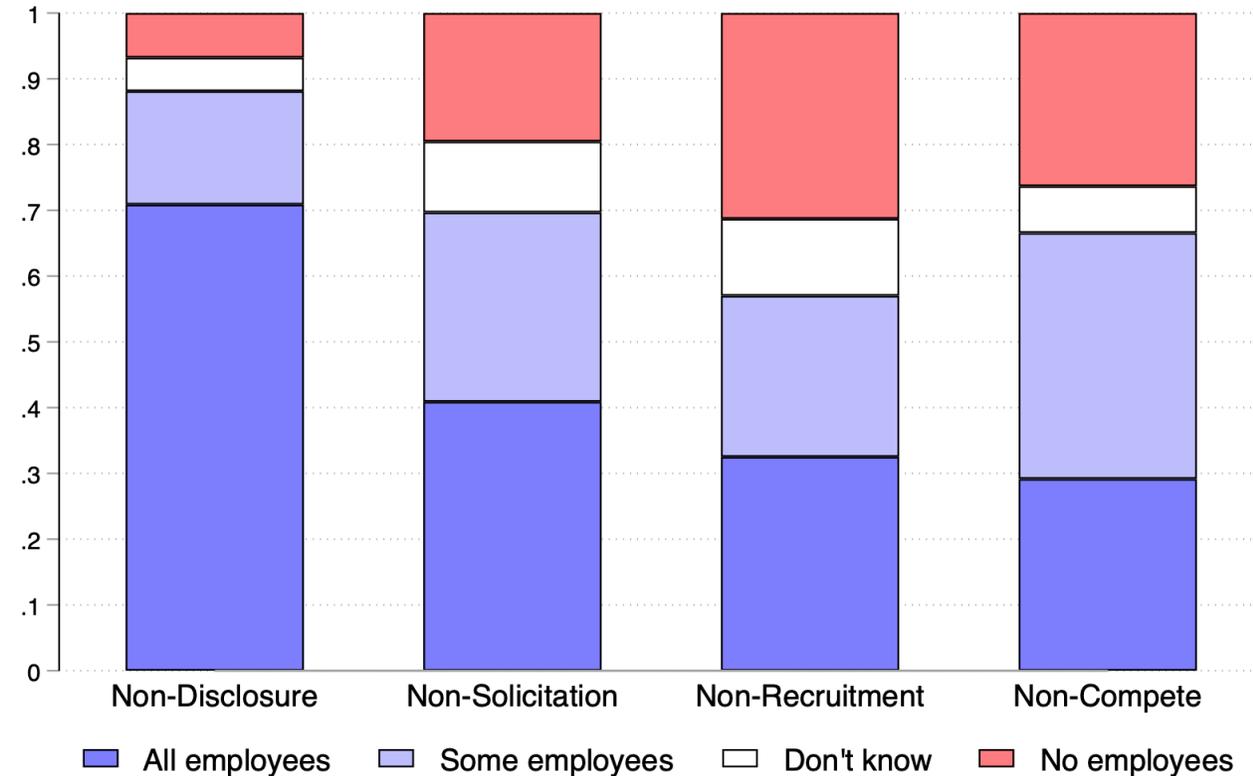
Source: Balasubramanian, Starr, Yamaguchi 2020 “The Co-Adoption of Restrictive Covenants”

# What about other restrictive covenants?

Individual-Level Data (N=27k)



Firm-Level Data (N=1.5k)



Source: Balasubramanian, Starr, Yamaguchi 2020 "The Co-Adoption of Restrictive Covenants"

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**Table 1. Distribution of Contract Bundles**

**Individual-Level Data**

(1)

Combination of  
contracts:  
(NDA, NS, NP, NC)

1(Adopt)=Yes or  
Maybe Yes

(0,0,0,0) 41.31

(1,0,0,0) 24.47

(1,1,0,1) 2.25

(1,1,1,0) 6.28

(1,1,1,1) 17.19

**Other combinations 8.50**

Balasubramanian, Starr, and Yamaguchi (2019): “The co-adoption of overlapping restrictive employment provisions”

# Other provisions are *already* bundled together

**Table 1. Distribution of Contract Bundles**

Combination of contracts: (NDA, NS, NP, NC)	Individual-Level Data	Firm-Level Data	
	(1) 1(Adopt)=Yes or Maybe Yes	(2) 1(Adopt)=All employees	(3) 1(Adopt)=All or some employees
(0,0,0,0)	41.31	22.00	5.20
(1,0,0,0)	24.47	25.90	11.00
(1,1,0,1)	2.25	5.20	10.10
(1,1,1,0)	6.28	11.60	7.90
(1,1,1,1)	17.19	22.90	55.20
<b>Other combinations</b>	<b>8.50</b>	<b>12.40</b>	<b>10.60</b>

Balasubramanian, Starr, and Yamaguchi (2019): “The co-adoption of overlapping restrictive employment provisions”

# Goals For Today: Focus on Agreed-Upon Policy Issues

1. Where are noncompetes used?
  - *Answer: Everywhere*
2. How does banning noncompetes influence *low-wage workers*?
  - *Answer: Generally beneficial*
3. How does *early notice* matter for workers?
  - *Answer: Notice → Better worker outcomes*
4. Do even *unenforceable noncompetes* chill employee mobility?
  - *Answer: They do*
5. What about *other* restrictive covenants?
  - *Answer: Already used alongside noncompetes*

## Not Addressed Today:

- Externalities
- High-Tech, Physicians, Executives
- Effects on firms: hiring, performance,...
- Effects on investment by workers/firms