



Background

Restrictive employment agreements like non-competes and no-poach agreements have long been barriers to worker's rights and fair economic competition. The employment restrictions depress worker's wages and limit their career growth by creating barriers for people trying to build experience within a given industry. Non-competes contribute to concentrations of market power and, according to the Federal Trade Commission (FTC), "suppresses wages, hampers innovation, and blocks entrepreneurs from starting new businesses."¹

In 2023, the Minnesota legislature made great strides in protecting Minnesota workers from these exploitive employment restrictions by prohibiting non-compete and no-poach agreements. Unfortunately, after those laws went into effect it became evident that there are additional anti-competitive restrictive employment covenants in contracts that unfairly restrict the ability of workers to find and keep jobs in their region and industry. Even worse, these employment restrictions are in service contracts between two entities without the knowledge or consent of the workers they impact.

Banning Restrictive Employment Covenants

Restrictive employment covenants or "shadow non-competes" exist in service contracts that operate without the knowledge and above the heads of workers that that they impact. *Restrictive employment covenants* serve the same essential anti-competitive purpose as non-compete agreements but are inconspicuous because they limit workers' job opportunities without their knowledge.

After workers came forward this summer to expose these restrictive employment provisions in service contracts, it became clear that further legislation is needed to close the loophole whereby companies can continue to restrict workers through what are essentially hidden non-competes by another name. *In Minnesota, it has been widely reported that a multinational property management company uses these restrictive employment covenants in its contracts with homeowner's associations (HOAs) whose buildings the company staffs and manages.*² In practice, if an HOA under one of these contracts switches to a different property management company, these contracts prevent that HOA from retaining their experienced staff without the risk of being subject to litigation for continuing to employ experienced staff directly, or indirectly through a different property manager for a period of time (usually between one and two years).

Restrictive employment covenants take choices away from workers who are trapped by such predatory employment practices. They also hinder competition and create barriers for HOA's and other customers from being able to fairly compare and contract with service providers.

¹ [FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition](#), Federal Trade Commission, 2023

² [Minnesota banned noncompetes. A major property manager has a workaround.](#), Minnesota Reformer, 2023



Passing SF3721 will:

- Prevent clients like HOAs from hiring the workers they want
- Ensure workers have the ability to seek and retain employment in a given location and industry
- Require notice to employees of service providers that are impacted by existing agreements
- Promote competition in all industries to attract, train, and retain a strong workforce

About SEIU - Local 26

SEIU Local 26 is Minnesota's Property Services Union. We are janitors, security officers, and window cleaners—more than 8,000 strong in the Twin Cities metro area. Across North America, SEIU unites 225,000 members in property services. Local 26 members are largely Black, brown, immigrant, and low-wage workers.