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36 Million Workers Bound By Noncompetes, Survey Says

By **Braden Campbell**

Law360 (December 10, 2019, 2:02 AM EST) -- Upward of 36 million private-sector American workers have signed noncompete agreements limiting their ability to leave their jobs for new ones, according to a report released Tuesday by a progressive workers' advocacy group.

A survey of hundreds of hiring managers around the country shows that between 28 percent and 47 percent of the 129 million member private-sector workforce — about 36 million to 60 million workers — have signed these controversial agreements, which stop workers from joining or launching competitors for a time after leaving their jobs, the Economic Policy Institute said.

"These things are ubiquitous," said EPI senior economist and policy director Heidi Shierholz, who co-authored the report with Cornell University School of Industrial and Labor Relations Dean Alexander Colvin.

EPI engaged the Survey Research Institute at Cornell University to gauge the prevalence of these agreements, which have drawn criticism from both sides of the political aisle, though reform efforts have gained little traction federally.

More than 600 HR or hiring managers for businesses with 50 or more workers responded to the survey, EPI said. Just a hair under half of these respondents said at least some of their workers are subject to noncompete agreements, and a little under a third said all of their workers are. Businesses are more likely to sign well-educated, highly-paid workers to noncompetes, though many businesses restrict low-wage workers' movement too, the survey found.

About 29 percent of respondents whose workers earn less than \$13 per hour sign all their employees to noncompetes, compared to about 36.5 percent of workers for businesses paying out \$22.50 an hour or more. Of respondents whose workforces are made up mostly of workers who have attended or graduated high school, more than a quarter make all workers sign noncompete agreements. About 45 percent of respondents whose typical worker has a college degree sign some workers to noncompetes, EPI found.

The group also found that noncompete agreements are more common in certain industries than others. Business services industry respondents led the way, with about 70 percent saying they sign some workers to noncompetes and a little over half saying they sign all workers. The group found noncompetes were rarest in the leisure and hospitality industry, where only a quarter of respondents said a portion of their workers have signed noncompetes.

And noncompetes remain popular with California employers despite being unenforceable in the Golden State, the group said. Of the 82 California businesses that responded, about 45 percent said they subject some workers to noncompete agreements, and about 29 percent said they subject all workers to noncompetes.

Shierholz, who was the U.S. Department of Labor's top economist for most of former President Barack Obama's second term, said the survey findings are troubling because these agreements hurt the economy.

"[Noncompetes make it] so that you don't have outside job opportunities and your employer doesn't have to give you a decent wage increase to keep you," Shierholz said. "The other thing is that it hurts competition ... it's not like you just can't work for another firm in this industry, you also can't start another firm in this industry."

Federal reform may be on the horizon, Shierholz added. Not only have lawmakers including Sen. Marco Rubio, R-Fla., proposed limiting noncompete agreements, the U.S. Federal Trade Commission is set to probe whether these deals suppress competition next month, she said.

--Editing by Emily Kokoll.

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