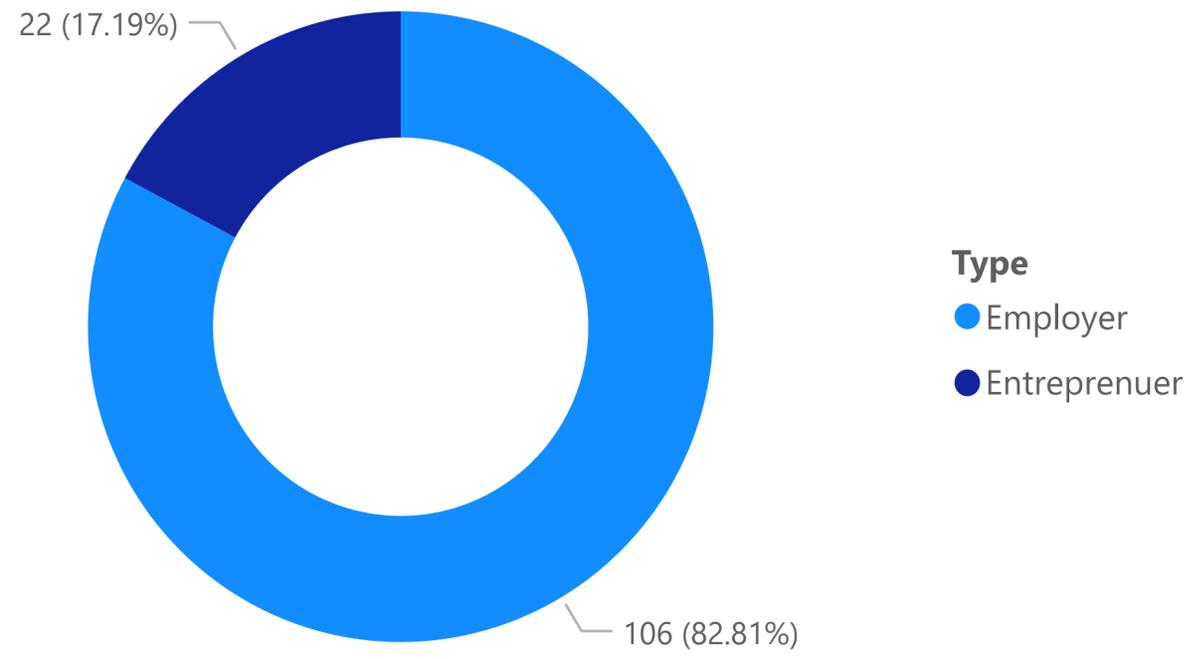
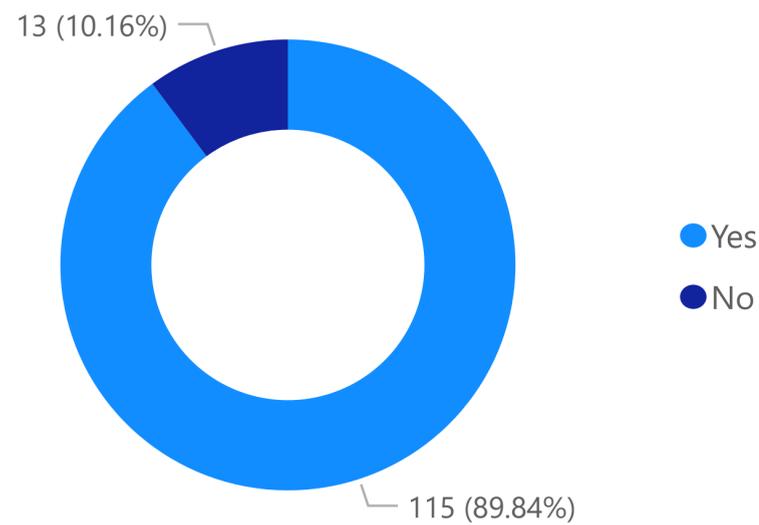


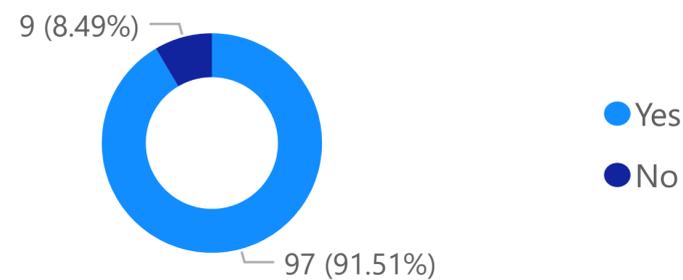
Type of respondent



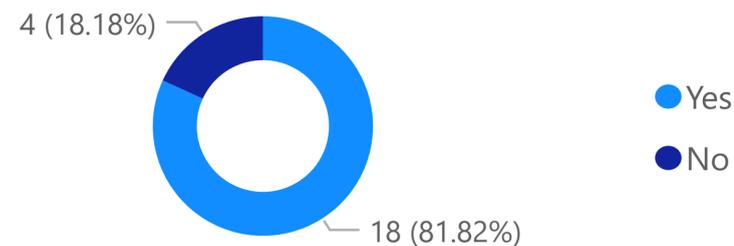
Q11 Do you use, or have you ever used, non-compete clauses in contracts of employment?



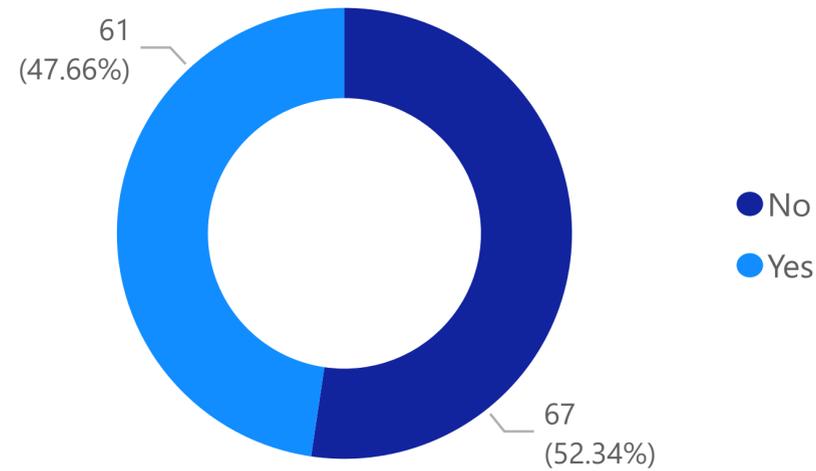
Employer



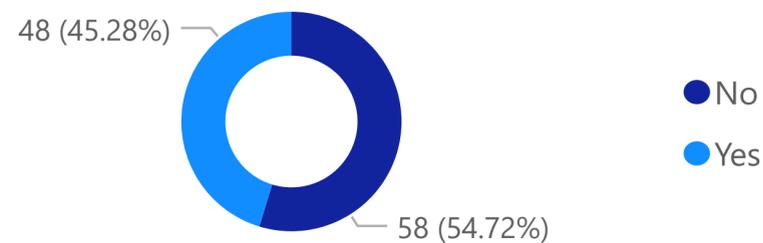
Entrepreneur



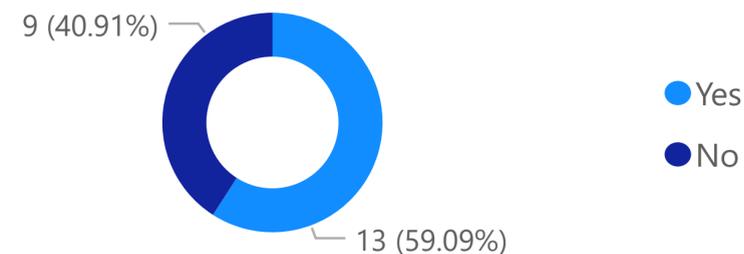
Q12 Do you use, or have you ever used, non-compete clauses in limb(b) workers' contracts?



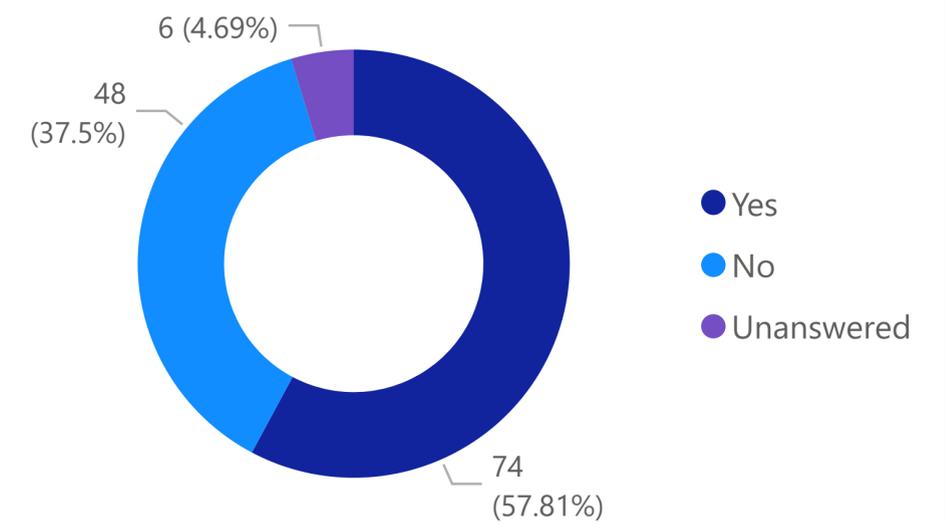
Employer



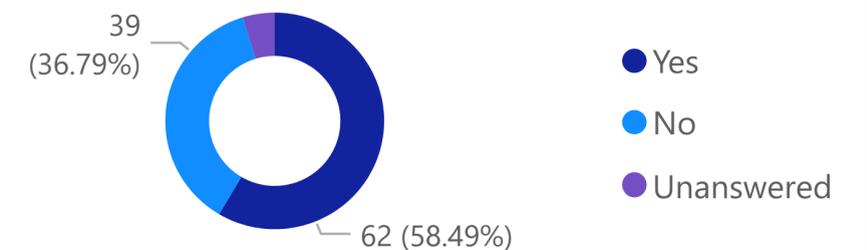
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Q13 If you were required to provide compensation for the period of the non-compete clause, do you think that you would continue to use them?



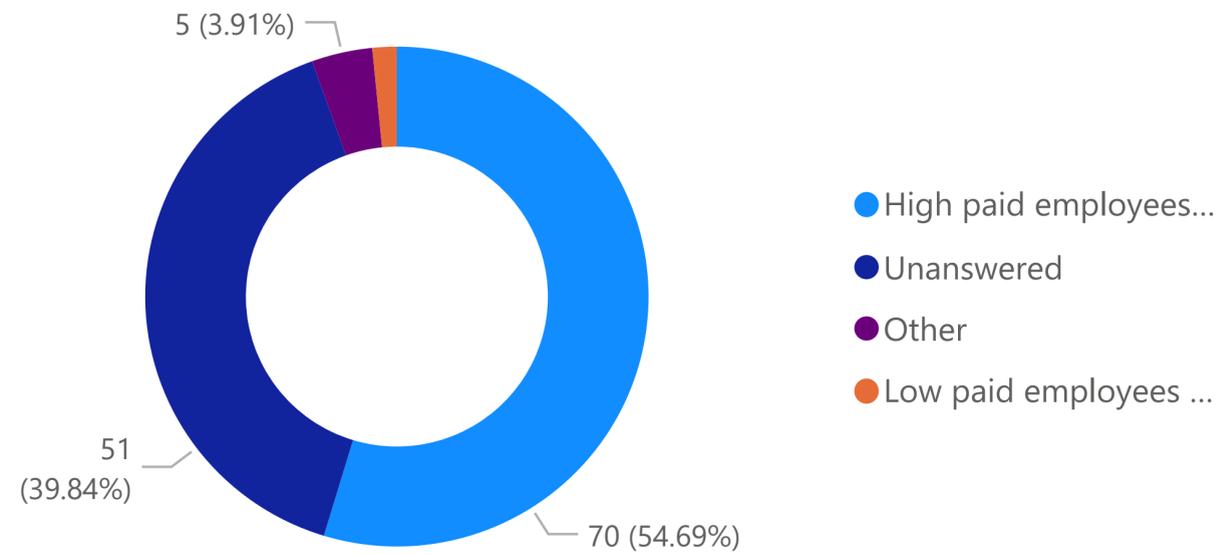
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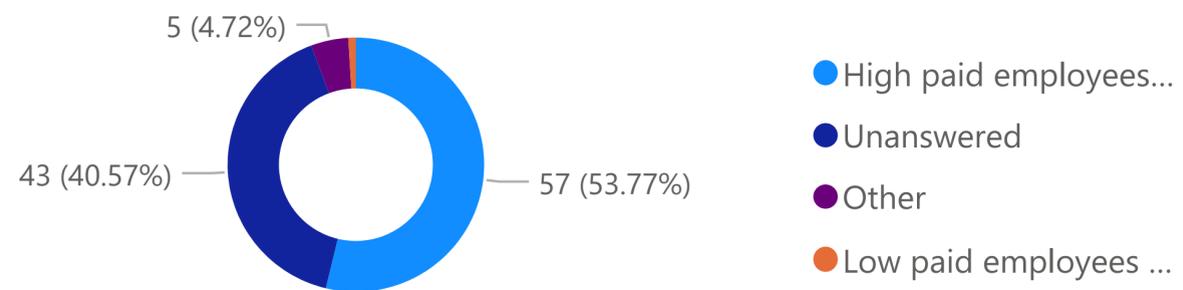
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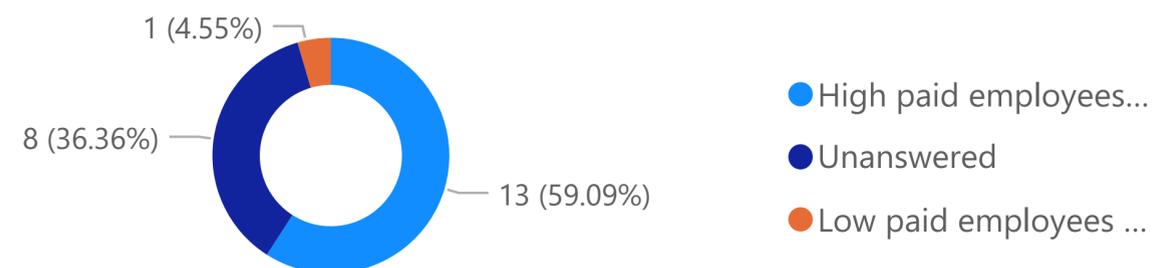
Q13 If yes, what kind of employees/limb(b) workers (high/low paid) would you maintain non-compete clauses in place for?



Employer



Entrepreneur



Please explain your answer

Would probably reduce the groups of employees to whom restrictions apply and focus on the highest paid employees and those in roles with most risk of disclosure of key commercial/proprietary information.

We would likely still include in executive agreements, but we'd have a discussion on whether to invoke the clause and make the payment, on a case by case basis, considering risk to the Company of non-compete not being complied with.

We use it for all employees given the nature of our business (consultancy for IP creation).

We currently use them for all. If compensation were mandatory, we would likely reduce the number of employees who have them.

The compensation requirement serves also as a limitation of the use of non-compete clauses. It forces the employer to consider whether the restriction imposed on the employee is really worth the expenditure. By nature, only a fraction of the workforce could potentially harm the company if they were to join the competition right after separating from their employer. For such key employees non-compete obligations should remain a viable option; however, without the compensation requirement there would be no check limiting their use.

The above answer is inaccurate but the system won't let me select neither. For us, I don't think it would be a remuneration based decision, rather who we perceive could cause most damage by competing against us. One would hope that the higher paid would be higher calibre and therefore most likely to cause damage, but that is not necessarily an accurate yardstick.

Senior Executive, Regulatory roles/Underwriting Business Heads or Underwriter experts sought in market.

Our high paid employees are paid to build key relationships for the organisation but they are always tempted to build them for themselves. We train develop and support them through this process and if they can just leave and take all the information for themselves we will be incentivised to cut them out of the process and dumb down the roles using technology and off shoring.

Our business is built on relationships with our clients and the people who work in them. Our higher paid employees are entrusted with management of relationships that others in the business have worked hard to develop. We need to protect against people abusing this trust.

More likely to use non-compete clauses for more senior roles and/or those roles that have access to or influence strategic direction.

More likely to be used for senior staff who have insights into business strategy, or who hold proprietary information.

Employees with a high level of access and visibility of commercial terms with customers.

Employees in client facing and business development roles.

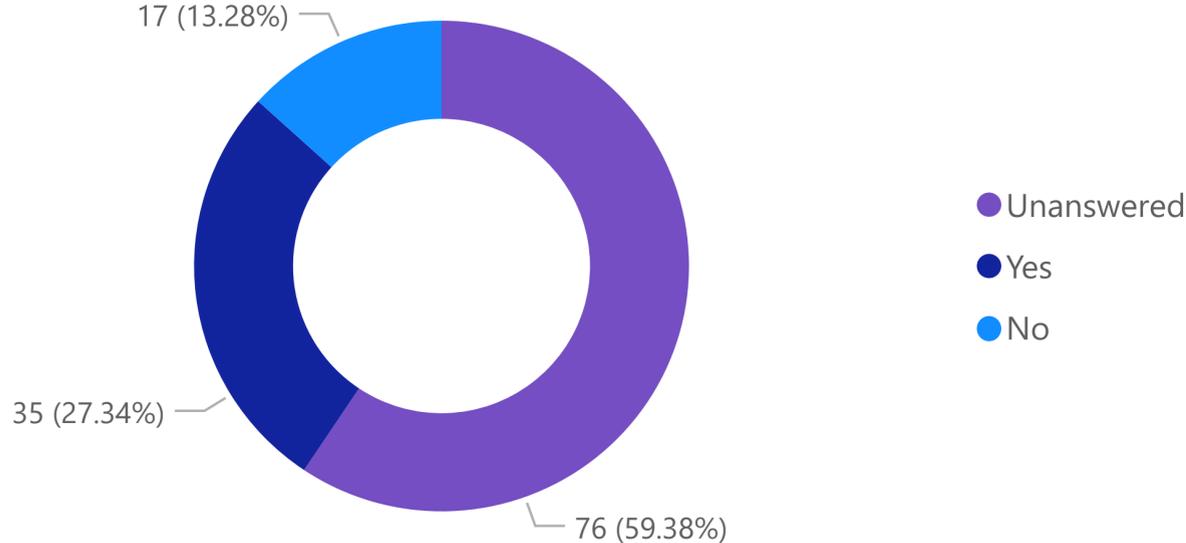
Both. I think this should be an option in your answers. The rationale for a non-compete is to avoid commercially sensitive information being used by competitors or for commercial gain against us. That can sit with highly or lower paid workers.

Any employees or workers who have access to confidential information will generally be subject to non-compete restrictions - these employees tend to be paid more than staff that do not have access to confidential information as part of their role.

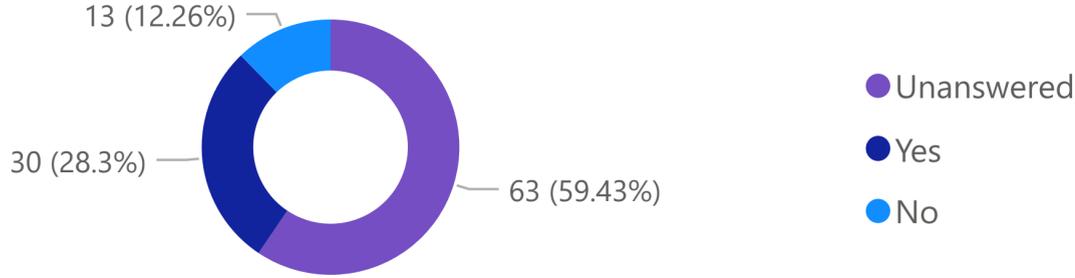
Any employee who could inflict damage on the business.

Align to where there is access to valuable information.

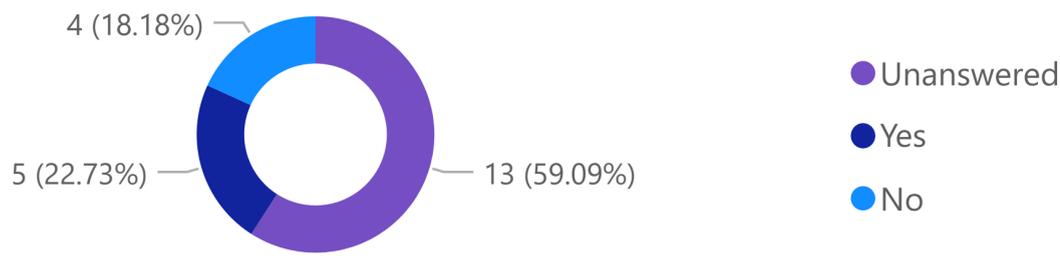
Q14 If you did not use non-compete clauses, would you be content to rely on other 'restrictive covenants' to protect your business interests?



Employer



Entrepreneur



If yes, do you think there would be any unintended consequences to this? Please explain your answer

Yes, but it would depend entirely on the strength of them. Not hugely optimistic.

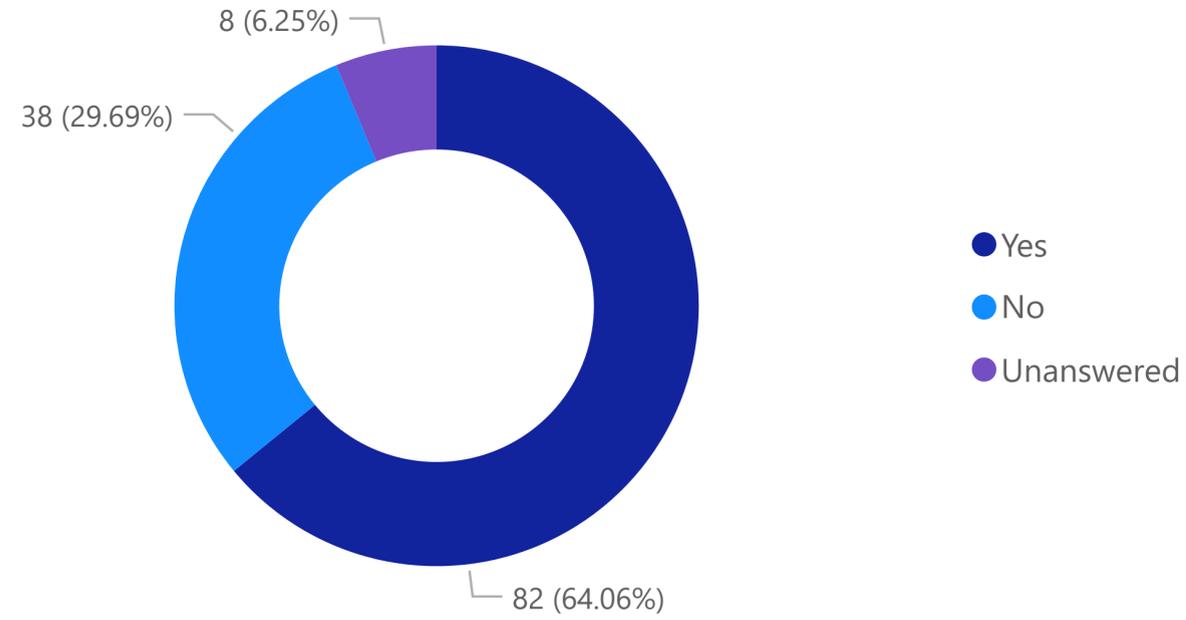
We would have to have non-compete clauses in the contract because otherwise all our training and effort would go to waste. An unintended consequence could be we charge our staff for training.

Our business (recruitment) is very relationship led. We hire recruiters for their network / black book and understand that they will use those contacts when they move to another employer. It therefore works both ways. The emphasis is on us as an employer to ensure that key relationships do not hinge around one point of contact who is a member of staff on a notice period. Instead, key clients have numerous points of regular contact at various levels from us thus removing individual personality-led relationships.

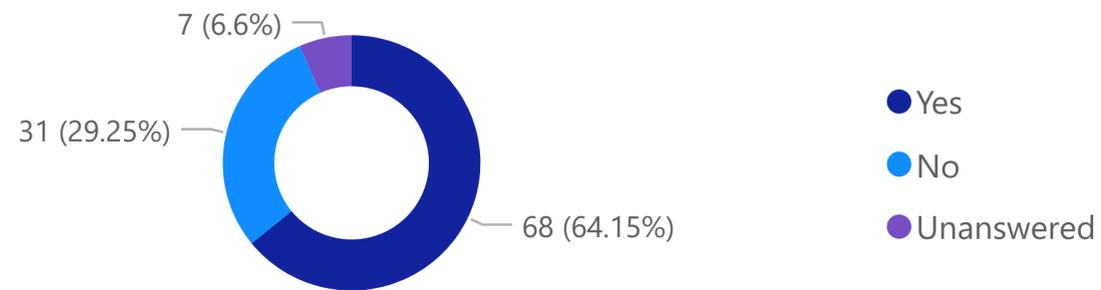
Non-compete clauses provide a specific protection to the business. If you start looking at other restrictive covenants all you will do is start a new debate over their enforceability.

A company has the right to protect its interests. To be mandated to provide compensation in return for a non-compete then it would rightfully expect to be able to enforce its rights. Employees and the new employer would need to be aware of that to avoid a case of having cake and eating it.

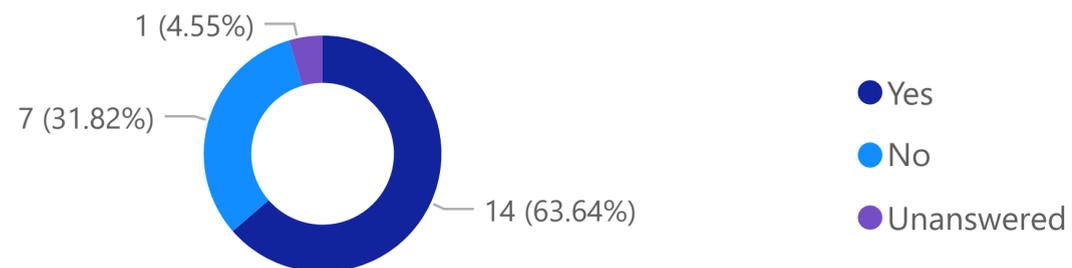
Q15 If mandatory compensation were introduced, do you think you would increase your use of other 'restrictive covenants'?



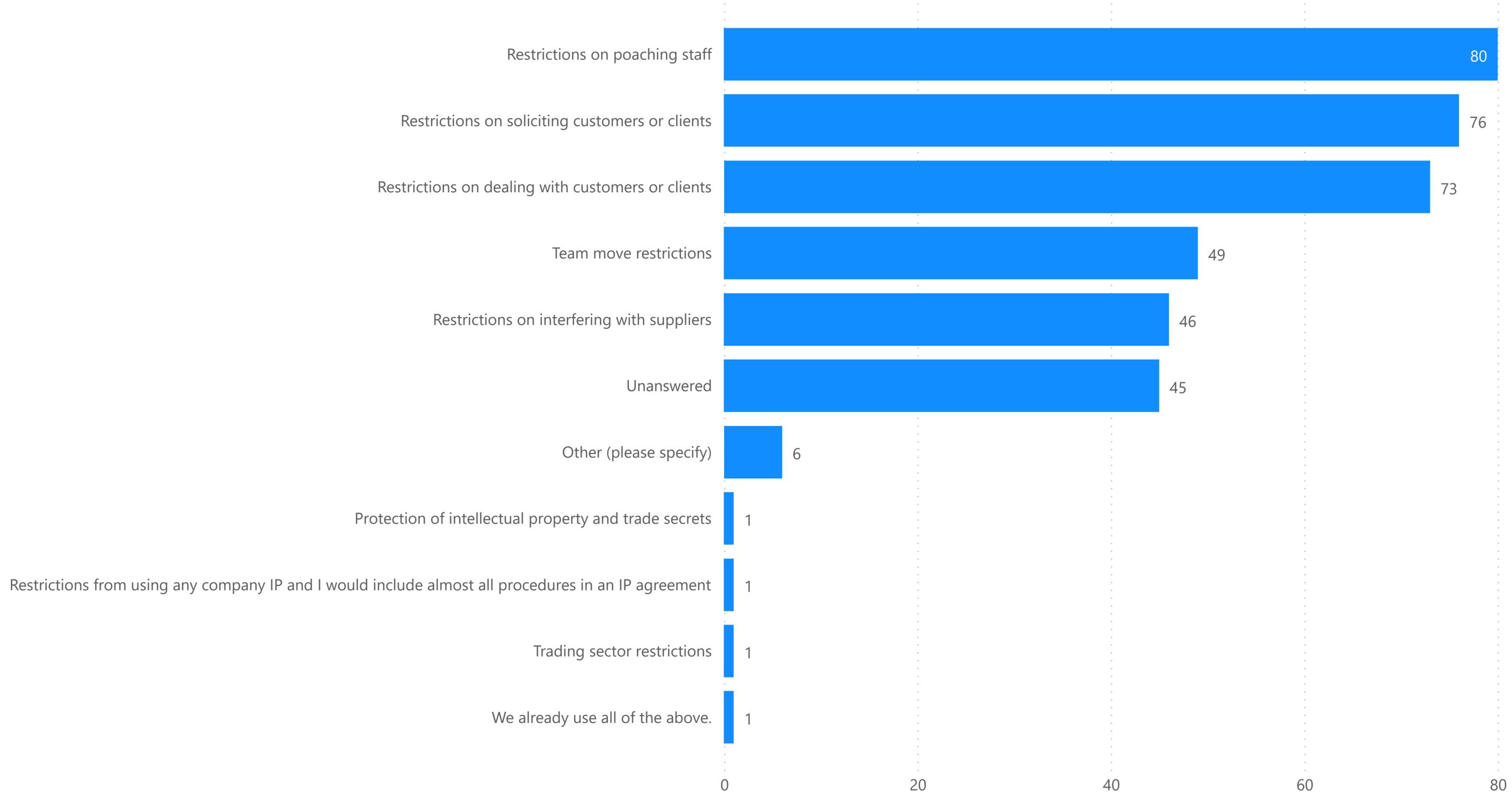
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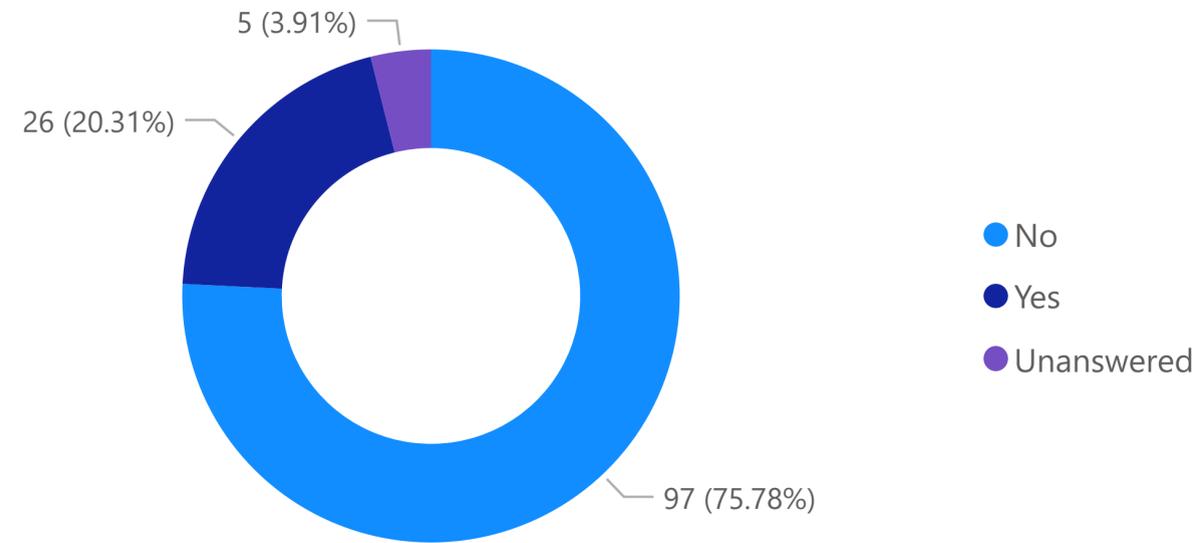
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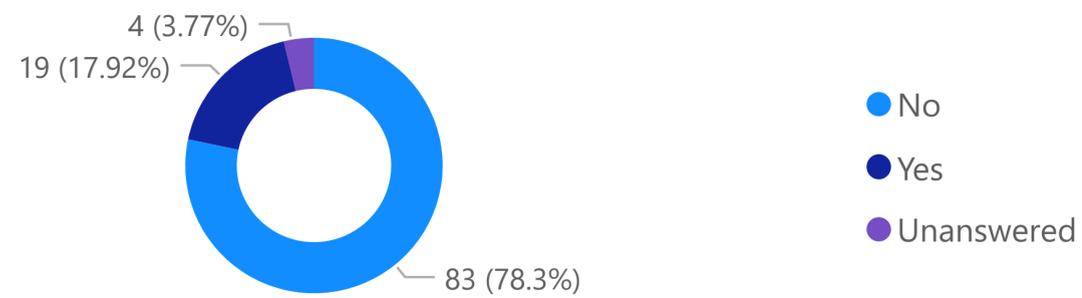
Q15 If yes please explain which ones



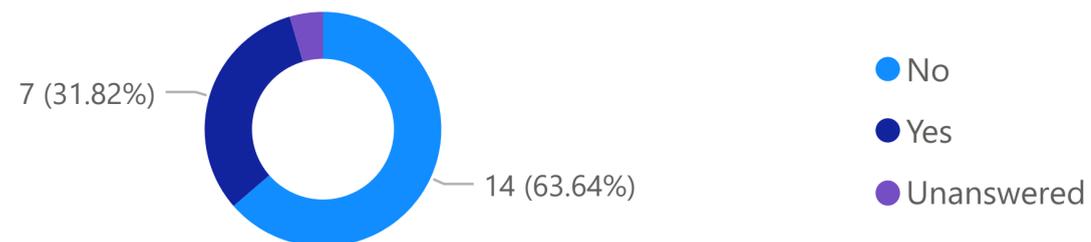
Q16 If you use non-compete clauses in contracts of employment, do you already pay compensation or salary to employees for all or part of the duration of the non-compete clause?



Employer



Entrepreneur



Feel free to give reasons

Under Spanish employment law non-compete clauses cannot last more than 2 years and they have to be "adequately" compensated. This criteria is not defined in the relevant employment law but only in case law.

Employees are well compensated during their tenure. Non competes are narrow and generally there are many opportunities to work beyond the narrow restrictions.

Any period of restriction is offset against any period spent on garden leave. The majority of our workforce will spend their notice period on garden leave and the non-compete restrictions are generally the same length as notice periods. Employees therefore effectively receive compensation during the non-compete period.

Employees sign a contract with non-compete clauses that tend to strengthen the more senior people become and, in return, deliver greater reward and benefits. So the argument is that the 'compensation' is baked into the remuneration package for the role. If the departure of the employee is acrimonious then the non-compete clauses are required to protect the business (financial performance and people roles). If non acrimonious then 'compensation' is usually reflected in reduced periods, client, people carve outs.

Our company is too small to be able to afford it.

It would make it commercially not viable.

We use this type of clause in German employment contracts with certain key functions. German labour law allows such post-termination non-compete for a limited duration, but only if the employee affected is granted compensation for his/her loss of revenue during the cooling off period.

The wording of the contractual element is designed to encourage a leaver to be open towards us about their intended new employer, their duties, so that we can enter into an agreement or understanding between the employee, the new employer and ourselves that our commercial interests will not be abused.

It's only fair.

Because the employee obtained knowledge and built relationships under our employ and was compensated through their remuneration. To allow an employee to immediately compete with an employer within 3-6 months is damaging!

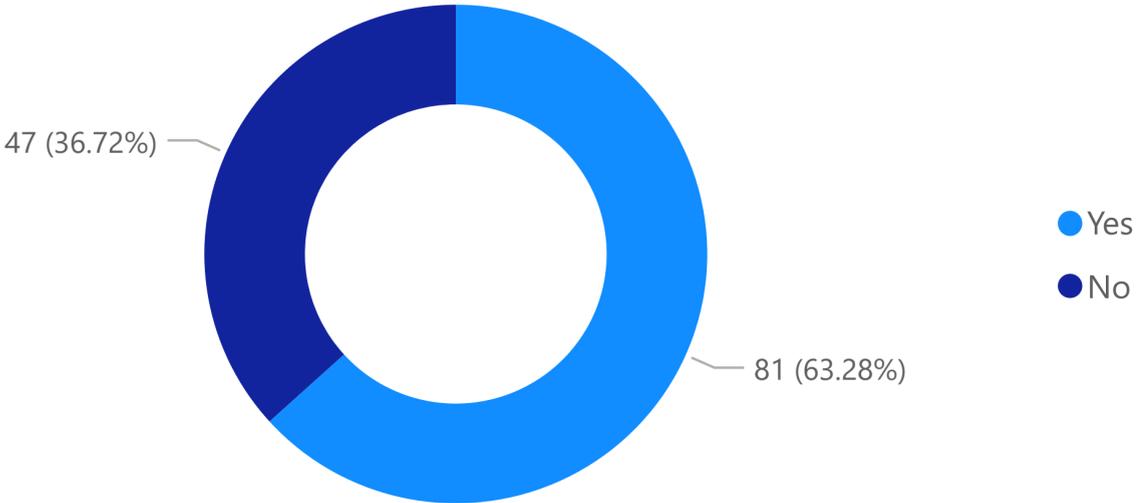
Having worked hard over many years to build businesses, it is unfair that someone joins and then takes customers and contact details and then goes into competition. They have not invested money or time over the many years. Thereby in essence they are benefitting from someone else's hard earned work / capital investment into a business. Why is this different from theft (direct or indirect)?

The employee has chosen to move to another organisation which is their choice. However, they have benefitted from learning our IP and frameworks which they can then use at a competitor which could immediately work against us.

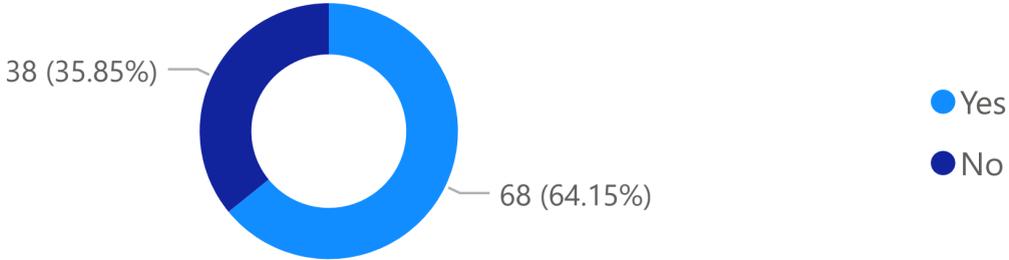
We spend a lot of money and time in training people and we have some unique USP's. It is not fair if an employee then can take advantage of that with a competitor.

It's a contract. We can't expect to 'own the loyalty' of a soon-to-be ex-employee in the form of a non-compete period without paying for the privilege.

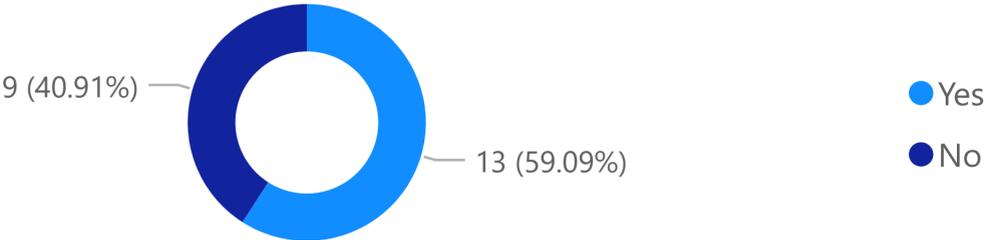
Q17 Do you think employees would be more likely to comply with the terms of a non-compete clause if mandatory compensation was introduced?



Employer



Entrepreneur



If not, do you have suggestions for increasing compliance?

Boundaries on locations, services, general parameters.

Clearer legislation on what is appropriate and enforceable with regard to non-compete clauses.

Courts are insufficiently sensitive to how critical a non-compete is for knowledge industries where the assets walk out the door when the employee walks out the door.

I think the areas to look at are: duration - a non-compete for 12 months is too long and drives non-compliance. Maybe a restriction on duration to max 6 months? Terms – I have seen penalties that are grossly excessive in relation to the actual harm that could potentially be generated. Perhaps guidance on reasonableness i.e. if you worked with a client in the UK on one project (that generated £200k revenue to the UK entity) but the client worked across the world with the company (that generated £10m revenue) is it fair that the penalty is equivalent to 1 year's global revenue. This is a real example. Is there a difference between the approach to clients, people and data non-competes?

If companies actually pursued the compliance through the law there would be more compliance.

Many employees are carefree with confidential information given the ease of moving data between systems nowadays. It should be much easier to ensure current employees do not breach data requirements or face penalties. At the moment all the risk seems weighted towards the employer.

More clarity from employers on what reasonable non-compete clauses look like, and reasonable duration (i.e. not to draw them too widely to be unenforceable, or too narrow as to be side-stepped easily).

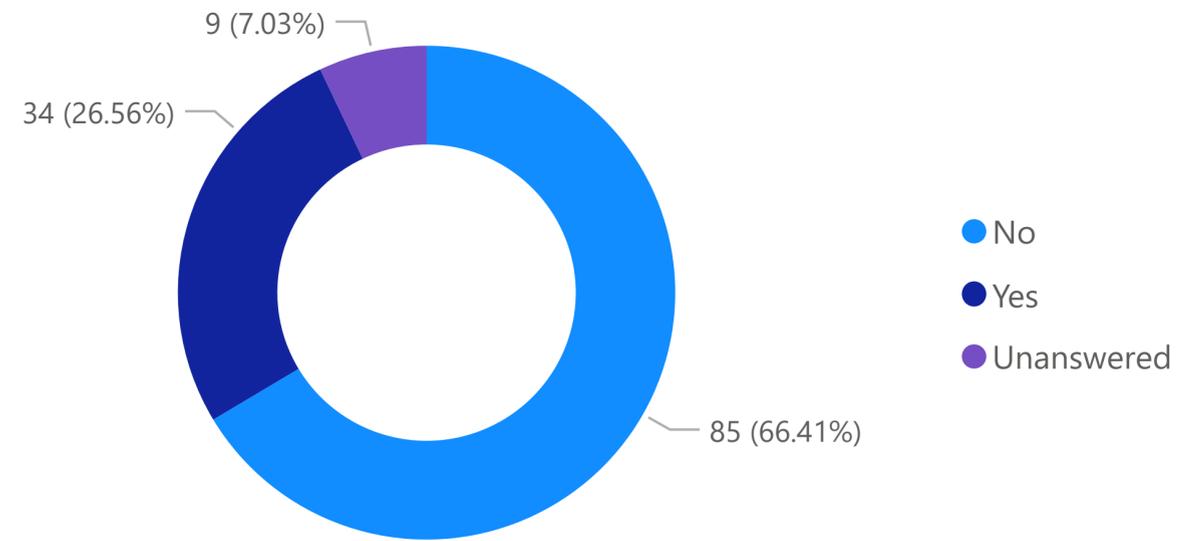
Perhaps shifting liability for non-compete clauses to the incoming employer, so not just the individual.

Simplifying what is defined under the non-compete clause. Explaining at the point of hiring their existence. Demonstrating their value and how they are current and possibly future employers.

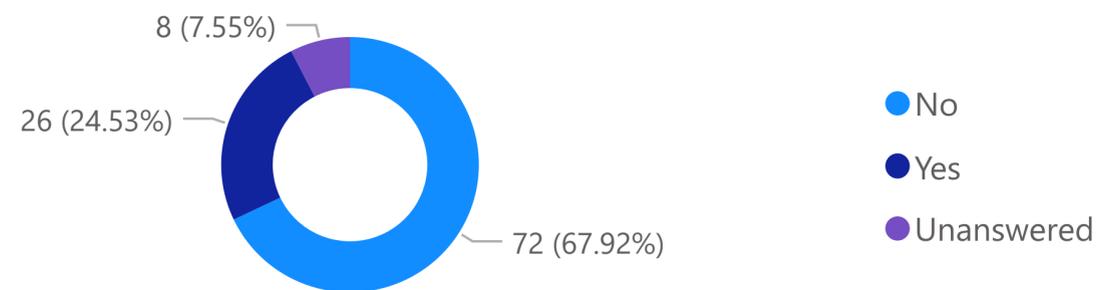
We believe that such restrictions are better placed in a shareholders' agreement to give them added weight. We would consider - possibly - setting them to one side and not including them in an employment contract but appreciate this is a "bold step".

We find legal action is intermittently necessary. For us that does form some kind of deterrent.

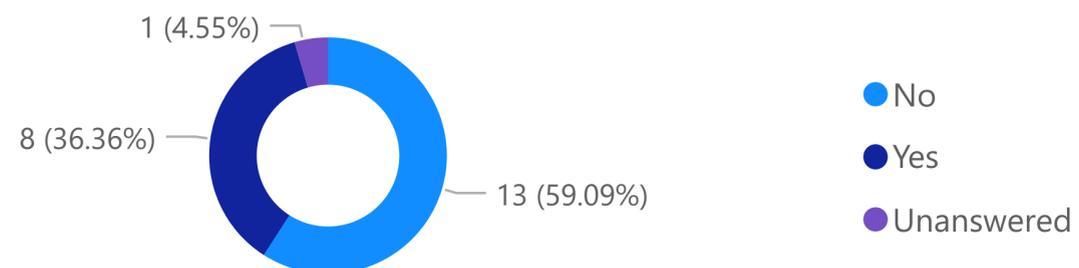
Q34 If the Government introduced a ban on non-compete clauses in contracts of employment do you think you would be able to sufficiently protect your business interests through other means, for example through intellectual property law and confidentiality clauses?



Employer



Entrepreneur



If not, why not?

Being a UK company who invests considerably in intellectual property, changing the rules on restrictive covenants would have negative implications to either internal communications reducing sales effectiveness and/or where we would choose to recruit and base critical employees – i.e. we would consider moving outside of the UK jurisdiction. This is a standard practice that is not abused but does provide protection to companies wishing to protect their commercial and technical interests – any lessening of restrictive covenants undermines this basic employer right.

We will then have to rely on proof of commercial interference or breach of confidentiality which can be hard to prove.

Non-competes cover more than just IP and confidentiality, I would have to create a document that did basically the same thing as a non-compete and call it something else and word it differently so it would stand. Non-competes exist for a reason, employee theft and that will not stop just because they ban the use of non-competes. You cannot throw businesses under the bus to protect the individual employee, employees only have jobs because businesses exist and businesses can't exist if employees steal from them!

There is a risk that contracts would need to be too precise and specific about what an employer is trying to protect which could leave too much room for ambiguity and/or create hugely long and complicated employment contracts when trying to cover every possible eventuality

Burden of proof is always difficult, at least with employment clauses a court can rule more easily on enforcement of the NCC.

It is often far easier to gather strong evidence that a former employee has been competing in breach of their restrictions (through social media, client notification etc.), than to obtain tangible evidence that they have stolen and misused confidential information. By definition, the fact that they have stolen confidential information with the intent to misuse it means they typically have gone to some effort to conceal that. Removing non-competes allows ex-employees to enter the same marketplace delivering and undercutting.

IP / confidentiality clauses unlikely to go far enough to protect legitimate interests.

Because key commercial confidential information cannot be policed without a non-compete period. We wouldn't know or it would be too late to know when there had been a breach - which would then result in expensive and time consuming litigation to enforce the business' rights.

The cost of litigation to prove liability would be too great. At the end of the day you are trying to have enough time to protect your business. It should be remembered that the person/team leaving may have been planning for months/years to compete with their current employer. They then surprise the Employer with a departure. Would it be fair for the person to then immediately 'asset strip' their employer when they have no time to plan or risk manage the impact? This is why I feel that the duration is the key. Any business should be able to plan for a departure in order to manage the risk over a 6 month period, any longer is bordering on an unfair restriction to earn a living.

It would be very difficult to prove a breach of these.

Recruitment has low barriers to entry so non-competes prevent someone working for us for a short period, taking the knowledge and setting up shop – restrictive covenant breaches would be hard to identify for someone setup on their own, they are more generally used when someone moves to an established competitor, where they are enforceable.

The need to impose a large number of restrictions to achieve a similar protection would make compliance for the employee much more difficult and at the same time increase the risk of loopholes which could be exploited by the employee to the detriment of the former employer.

The increased use of social media and the difficulties with establishing ownership of business relationships developed during employment is already preventative. Taking away the ability to attempt to protect business interests with restrictions will only add to these issues.

Our business is highly competitive and our people are our most valuable asset and as such, if executives were to leave and poach key talent post their departure, it could be particularly damaging to our commercial viability.

We work in the knowledge economy.

The burden of proof would be on the ex-employer and the costs of litigation may be prohibitive. It would also create a huge distraction to the business.

If the government introduced a ban on non-compete clauses, we would not hire anyone in the UK. As it would represent an unacceptable risk for our knowledge based business.

Staff who leave would be able to go directly to a competitor and use their professional knowledge against their former employer, without breaching confidentiality. That knowledge would have been gained during their employment, and couldn't be protected by the former employer. This would undermine "knowledge-based businesses" who form a critically important part of UK industry.

It's too difficult to enforce confidentiality/non-solicit restrictions once an employee has started work with their new firm, especially if they're breaching them indirectly via colleagues.

My concern is ensuring the protection of confidential information, which is more difficult to protect for various reasons. I would not be as concerned about protection of IPRs.

Those other options wouldn't cover client contacts, knowledge of the company strategy, pricing knowledge etc. to be used in competition with us.

A professional business has to allow for trust and independence. If we started watching, listening, recording everything our employees did then we would lose our culture which would damage our business more!

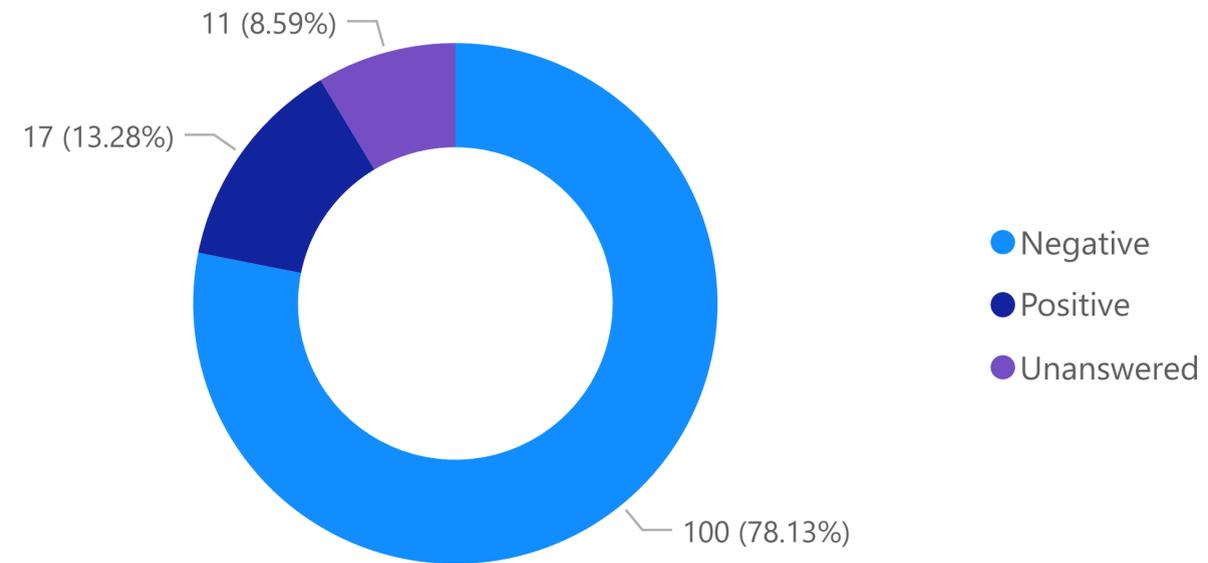
If an employee was to resign and (whether or not during their notice period) began soliciting clients to their new position or firm - would find it difficult to stop this or prove that indeed this was happening. A period of 'quiet' prior to taking up employment with a competitor ensures we have the time to manage/rebuild our direct relationship without interference.

It can be significantly more difficult to prove confidentiality breaches and breaches of non-solicits. A non-compete is more clear-cut.

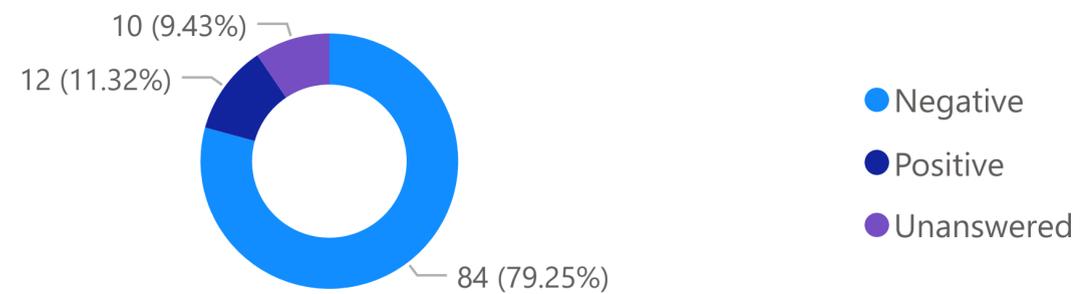
The risk of IP walking out the door is very high in staffing. The incentive for competitors to hire your staff would rise, the implicit protections would recede.

As explained previously many businesses are built on hard work and investment risk. This cannot be protected by IP. Thereby unfair for a person to join a business and simply learn and replicate. They have not invested or taken the risk that entrepreneurs are being encouraged in this COVID time to do. Rather hypercritical to ask an entrepreneur to make capital investment risk decisions if cannot be protected from own staff.

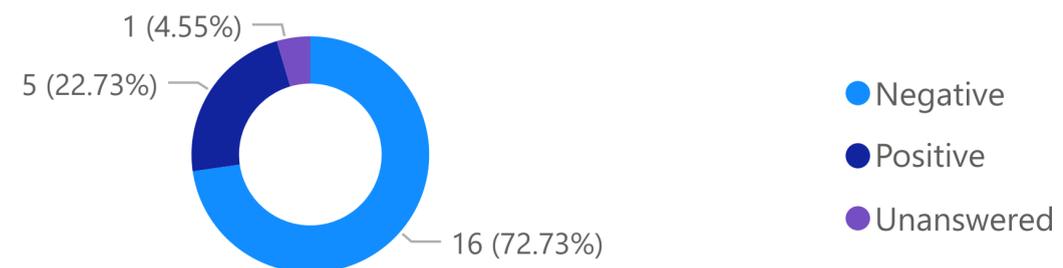
Q35 & 36 What type of impact would a ban on non-compete clauses have on your business?



Employer



Entrepreneur



Please note that questions 35 and 36 in the consultation have been combined to produce this question

How would the impact be positive? Please feel free to comment

Employees would feel more empowered in that they would have flexibility to leave (and join) without the restrictions of a non-compete. However enforcing a non-compete can be difficult without stopping the person from earning a living so not sure how much use they actually are - except in very high profile or business development roles.

I would have answered "unsure" if that had been option. I think it could have positive and negative impacts.

It would allow us to hire from rival firms, where the staff are unhappy but can't leave - generally our staff are satisfied with our firm and we have a relatively low turnover.

It would be easier to hire people from our competition and benefit from their networks of contacts more quickly. It works both ways.

Looking for engagement with employees rather than compliance with contractual terms.

Non-competes are generally messy and take up lots of management time to negotiate an exit. Without them, everyone moves on faster. It would be a case of reviewing client contracts to protect the business rather than restrictions in employee contracts. The client contract reviews would be seen as positive as new a term and possible review of remuneration could be agreed.

People would be more motivated.

We are a growing business, it would make it easier to attract staff from competitors.

We could attract new employees with significant knowledge.

How would the impact be negative? Please feel free to comment on the potential severity.

Being a UK company who invests considerably in intellectual property, changing the rules on restrictive covenants would have negative implications to either internal communications reducing sales effectiveness and/or where we would choose to recruit and base critical employees – i.e. we would consider moving outside of the UK jurisdiction. This is a standard practice that is not abused but does provide protection to companies wishing to protect their commercial and technical interests – any lessening of restrictive covenants undermines this basic employer right.

It would expose the business to a loss of large accounts whenever staff leave.

We have a unique business and keeping our intellectual property safe is very important to us, especially as we are a small business.

In a small market segment, the ability to move to competitors easily would be commercially damaging for our company.

We operate in a highly competitive sales & IT environment and if our competitors had 'inside' confidential information on our strategies and pricing models they would gain advantages when we're bidding against them for new sales opportunities.

I think that this would be reasonably severe. There is a huge shortage of vets in the UK at present with a large number qualifying here and then back to the US/Canada/Asia as university fees are much cheaper here. Add to this the impact of Brexit for recruitment from the EU and we are in a tricky position already. In addition to the many positive ways we can encourage employees to stay, making it more difficult for the younger generation to hop ship to competitors would provide a better client experience all round.

Additional time, resources and significant increase in costs to defend the IP and competitive advantage of our business with reduced odds of success.

There are low barriers to entry in our business sector for a former employee to set up a competing business. The current regime, with restrictions needing to be tightly drafted, reasonable and time bound, strikes the appropriate balance between allowing businesses to protect themselves through handing accounts over to new employees which are protected for a fair period before the former employee can try and engage with those client accounts again.

The protection of our business and our employees would be threatened by an ex-employee knowing too much about our products, customers and prices.

Less able to rely on key employees who develop deep understanding of clients so would need more rotation of employees (around clients) and more "double resourcing" with overlapping employees. These would add cost and reduce service levels.

A ban on non-compete clauses is likely to impact our ability to maintain our position in the market. Additionally, we spend a lot of time / resources investing in our people and so a ban on non-competes is likely to affect our ability to protect this investment whilst allowing competitors to potentially benefit.

Non-compete clauses are essential in the highly competitive recruitment industry to protect the proprietary information of each business and ensure best practice and a fair and level playing field. Existing common law principles established through case law need to be protected. It might be helpful to clearly indicate what level of seniority a non-compete clause could be enforced against - in the recruitment industry this isn't a concern for more junior employees for example.

For more junior employees or those in roles without material customer connections or involved in the creation of IP the impact is unlikely to be significant. However, the impact of banning non-competes could be very serious from the perspective of allowing senior executives, relationship managers, and software developers working on new products to start new employment with a competitor immediately after leaving the business could be costly and disruptive.

Our competitors would be more likely to obtain access to confidential business information.

Fee earners would be free to go to competitors and damage our valuable business

When this happens it is infrequent, but the more senior employees or sales personnel, present an obvious concern in terms of their knowledge. Although they may not directly share knowledge, it is virtually impossible to prove if they have, or how, but they can certainly easily share important information on how we work conversationally.

Because anything that increases business risk needs to be met with a way to manage the risk- this will drive creativity and innovation in alternative models that actually may drive bigger problems. Better to accept that non-competes are a valid mechanism to manage business risk but focus on defining restrictions on durations and penalties to avoid the unfair terms that are being drafted.

Commercial impact as well as competitive impact on our product pipeline and business USPs.

The non-compete clause is a deterrent to employees wanting to leave and if this is removed we are less likely to retain key personnel.

It would mean we would need to invest in much longer notice periods and thus increase the cost of staff turnover exponentially, inhibiting growth. We operate in markets with no non-compete clauses such as some US states. As a result we have to structure the business differently with multiple points of contacts with clients and much less efficiently. We also make sure we employ as few as people as possible in those states and get the work done in states and countries where we are protected. No restrictions will lead to a splintering and proliferation of small companies in a sector with too many small businesses that don't train their staff or bring in fresh talent but just poach from people who do and try and take their clients. If you want to reduce training and investment in people get rid of non competes.

We are a global business where people can work anywhere in the world so if the UK was less attractive we would reduce UK headcount and grow overseas.

We operate a recruitment business where our consultants dedicate their time to developing relationships with our clients. If there is no way to protect the ownership of those relationships, for any length of time, there would be nothing stopping our higher earners walking away with a significant chunk of our revenue stream.

Individuals would leave and work for competitors taking fresh and valuable knowledge with them.

It would mean that I could no longer have Associates as my business would be too vulnerable if they chose to leave and compete against me, having been introduced to all of my clients.

The cost of time and money to protect the legitimate interests of the company could be very high.

Would materially alter the risk profile for knowledge businesses in the UK compared to knowledge businesses located in jurisdictions where the courts take non- competes seriously, and can be relied upon.

I actually think it would be neutral but I wasn't given the option. We currently pay our staff. on gardening leave so it would not make a difference.

There would be nothing to stop ex-employees using insights and knowledge gained from a former employer against them. The highest bidder could simply buy the knowledge and skills developed by other organisations, leaving them without any protections.

Non-competes are a useful retention tool - they act as a barrier to exit; Non-competes protect our business from losing valuable client relationships and business insights - they give us time to shore up such relationships and IP before the employee lands at their new firm.

Sales staff could leave and take the whole business with them with no ramifications.

In veterinary practice, Vet Employees could open a business near your existing business and clients will follow them.

There is clearly a cost implication but we can't assess at this stage what the scope of that would be. In the short term the biggest negative impact will be that the discussion of the subject in the press will cause employees to believe that no restrictive covenants are enforceable.

It would put us at risk commercially of former employees using their knowledge and other assets and connections to our detriment. The detriment could be reputational, commercial, strategic

It would mean that we could not provide job security to other workers and suppliers. We have recently experienced such losses and the non-competes we currently have were impossible to enforce.

Would not encourage new potential business investments. Lawyers would have to detail contracts very specifically / tightly to protect business. Would mean more red tape. Again something the government should not be encouraging.

We are one of the best platforms on which to operate and we would be at risk of people using us simply as a springboard to set up their own businesses. We want people to join us for the long term and be part of our team building an ever stronger business, not working for us for short term reasons.

It would severely threaten our business turnover because of customer loss and would hamper our commercial advantage in terms of training, practices and procedures. We would significantly restrict training and development as it would not be cost effective.

Short non-competes are extremely useful for the fast moving sectors of advertising and comms. Longer ones are very important for our health clients who work on longer-term projects.