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Free to choose: Rethinking non-competes through training re-payment

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ABSTRACT

Should employees be free to choose the terms of their exit? Non-compete clauses are widely used to protect firms' investments in employee training and confidential information, but they also restrict labour mobility, suppress wages, and may hinder competition. This paper presents an alternative mechanism: allowing employees to opt out of non-compete clauses in exchange for repaying part of their employer-funded training costs. A training repayment opt-out enables firms to recoup investment in human capital without broadly restraining employee movement. It functions as a risk-sharing mechanism, offering retention incentives without creating artificial switching costs for employees. The analysis suggests that repayment-based opt-outs can address a core justification for non-competes — training underinvestment — while mitigating their potential anticompetitive effects. For authorities and firms seeking alternatives to outright bans, the opt-out offers a viable and pro-competitive path forward.

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I. Introduction

1. What if employees could choose the terms of their exit? Non-compete clauses are contractual agreements that prevent employees from working for rivals for a period after leaving their current employer. [1] These clauses are primarily used to protect the legitimate business interests of companies, such as trade secrets, client lists, or investments in employee training. By preventing employees from immediately transferring their newly acquired skills to competitors, these clauses aim to protect the resources allocated to workforce development.

2. However, non-compete clauses are increasingly seen as tools that reduce employee mobility, firm entry, innovation, wages, and productivity (e.g. Andrews and Garnero, 2025; Shy and Stenbacka, 2023). As authorities and governments around the world move to restrict or ban such clauses, [2] there is a growing need for alternative mechanisms that preserve firms' incentives to invest in human capital without distorting competitive labour markets. Draghi (2024) — a highly influential report in shaping EU policy — similarly argues that, in the short to medium term, competition policy should address practices that limit labour mobility, such as non-compete clauses.

3. This paper is motivated by that challenge: can we design a mechanism that protects training investments while preserving employees' freedom to move? By proposing a training repayment opt-out model, this paper aims to reframe the debate not as a binary choice between freedom and protection, but as a question of efficient, proportionate risk-sharing. [3]

4. The economic and legal literature has extensively examined non-compete clauses and training repayment agreements (TRAs). [4] However, the idea of offering employees an explicit contractual choice

1. For further details on non-compete obligations, *see* G. Manne, Non-compete obligation, *Competition Law Dictionary*, Concurrences, art. No. 12156, https://www.concurrences.com/en/dictionary/non-compete-obligation-12156-en (accessed 8 October 2025). For news and commentary on trade secrets, restrictive covenants, unfair competition, and employee mobility, *see* R. Beck, Trade Secrets | Noncompetes, *Fair Competition Law*, https://faircompetitionlaw.com/ (accessed 8 October 2025).

2. The emergence of empirical evidence documenting the prevalence and impacts of non-competes has prompted several governments to restrict the use of such clauses over the last two decades. For example, in 2024, the U.S. Federal Trade Commission (FTC) issued a final rule to promote competition by banning non-competes nationwide. Source: FTC, press release, FTC Announces Rule Banning Noncompetes, 23 April 2024, https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes (accessed 8 October 2025). Examples of other countries include Austria, Denmark, Finland, the Netherlands, and Norway. Proposals to restrict the use of non-compete clauses have recently emerged in other countries: Australia, Canada, and the UK (*see* pp. 16–18 in Andrews and Garnero, 2025).

3. Under the opt-out model, the employer still bears the risk of employee departure but is compensated for part of the training cost, while the employee bears the risk of reimbursing some costs if they choose to leave, yet retains full mobility. The model promotes risk-sharing by ensuring that the cost of turnover is not imposed unilaterally, but instead proportionately split according to actual, verifiable training investment and the timing of departure (*see* section III below for further details).

4. *See* section II below for further details on the policy context and economic rationale for non-competes.

between a non-compete and a structured training repayment obligation remains unexplored. TRAs are typically viewed as substitutes for non-competes, but not as part of a mechanism that aligns the interests of the firm and employee through opt-out flexibility.

5. This paper introduces and develops the concept of an opt-out model, in which employees may lawfully exit post-employment restrictions by reimbursing verifiable training costs. The novelty lies not only in the mechanism itself, but in framing it as a pro-competitive alternative that can mitigate labour market frictions without imposing regulatory bans. Crucially, the model enables decisions to be made at the individual employee level, rather than relying on one-size-fits-all rules. This, in turn, allows for greater flexibility and better alignment with the diverse preferences and budget constraints of workers. [5]

6. Importantly, this paper focuses on non-compete clauses justified by employer investments in employee training. These differ from restrictions designed to protect trade secrets, client relationships, or other proprietary assets. In such cases, confidentiality agreements, non-solicitation clauses, or garden leave provisions could offer more appropriate safeguards (Hrdy and Seaman, 2024; Mcmahon and Eustace, 2023; Sullivan, 2016). The opt-out model proposed here is not intended to replace those mechanisms, but to offer a fairer and more efficient alternative where training-based justifications are used to support non-compete clauses.

7. An adapted version of the opt-out model could, in theory, apply to other legitimate employer interests, such as trade secrets or client relationships. However, in practice, these cases differ materially from training-based restrictions. The value of trade secrets or proprietary know-how is often uncertain, making it difficult to quantify or compensate through a fixed repayment amount. Similarly, client relationships are not easily separable into individual cost components that could underpin a transparent buyout price. The opt-out framework is therefore most suitable for training-related restraints, where the underlying investment is measurable, time-limited, and partially recoverable.

5. The terms "worker" and "employee" are used interchangeably throughout this paper.

II. The policy context and economic rationale for non-competes

8. Non-compete clauses are widely used in employment contracts across various countries to prevent workers from joining a rival firm or starting a competing business for a specified period after leaving their employer. [6] They are most prevalent in knowledge-intensive industries and in roles where workers have access to trade secrets, receive significant training, or hold higher levels of education and compensation. However, non-competes are also commonly imposed on lower-wage workers, such as those in fast-food restaurants, personal service providers, or administrative roles, despite the absence of sensitive information or specialised skills in these positions (Autoridade da Concorrência (AdC), 2025).

9. From an economic standpoint, such clauses are often justified on the grounds of protecting firm-specific investments, particularly in training, trade secrets, and client relationships. However, as labour mobility becomes increasingly central to innovation, competition, and economic dynamism — especially in fast-evolving sectors such as technology and generative AI — these justifications have come under heightened scrutiny. [7]

1. Policy context

10. The enforceability of non-competes varies widely across jurisdictions. In the U.S., enforcement is governed at the state level, with California banning most non-compete clauses outright, [8] while other states (e.g. Florida, Texas) enforce them more broadly. [9] In April 2024, the FTC voted to ban most

6. *See* Table 1 in Andrews and Garnero (2025) for evidence on the incidence of non-compete and related clauses across OECD countries. In jurisdictions such as Finland and the U.S., the incidence of non-competes exceeded 40% of workers in 2017. In Norway, they affected over 40% of firms in 2023.

7. *See*, for example, AdC (2025), and Lemley and Lobel (2023).

8. *See* California Law: Noncompete Agreement Ban Takes Effect, *Purdue Global Law School Blog*, 11 October 2024, https://www.purduegloballawschool.edu/blog/news/california-noncompete-agreement-ban (accessed 8 October 2025).

9. *See* L. A. Thompson, Employer-Friendly Changes to the Law Relating to

non-compete clauses nationwide, citing them as an "*unfair method of competition*." [10] In Australia, key factors that affect enforceability include: the scope of the restriction, geographic reach, duration, and the seniority of the employee's role.

11. In the EU, non-competes are generally enforceable only if they are limited in time, geography, and scope, and accompanied by financial compensation. [11] In France, for example, courts require that the restriction be necessary to protect legitimate business interests and that employees be compensated during the period of restriction. [12] The UK, in contrast, allows non-competes without mandatory compensation, though the government has proposed a statutory limit of three months on their duration. [13]

12. Importantly, competition authorities are increasingly focused on the market impact of post-employment restrictions. For example, AdC (2025) recently noted that non-compete clauses in AI-intensive sectors may not only restrict individual workers but also hinder the diffusion of expertise. This, in turn, may create structural barriers to entry and reinforce dominant positions.

13. As these concerns grow, both authorities and scholars are seeking alternative mechanisms that can protect legitimate firm interests, such as training investment, without impeding worker mobility or foreclosing competition. [14] This paper contributes to that effort by proposing a structured opt-out model based on training repayment, which aims to strike a balance between employee freedom and employer incentives.

2. Economic rationale

14. The core economic rationale for non-competes lies in addressing a classic hold-up problem (Monahova and Foreman, 2023). Employers may be reluctant to invest in training or expose employees to sensitive commercial information if those employees can immediately exit and use that knowledge to benefit a competitor. By limiting post-employment mobility, non-competes can enhance the incentive compatibility of training investments, particularly when training is costly and not legally protectable through intellectual property (Bishara, 2011; and He, 2025).

15. Non-competes are also used to safeguard customer relationships, especially in client-facing sectors like advisory services, law, or sales, where goodwill and trust are often person-bound. In the absence of post-employment restrictions, employees may be able to "poach" clients, eroding the value of a firm's intangible assets. [15]

16. However, economic research increasingly highlights the negative externalities of non-competes. They reduce inter-firm competition for talent, suppress wage growth (Marx et al., 2015), and may deter entrepreneurship (Starr, 2019). Moreover, in knowledge-intensive industries, mobility of skilled workers plays a key role in diffusing innovation and accelerating productivity growth (Samila and Sorenson, 2011). As such, the costs of enforcing non-competes may outweigh their private benefits in many contexts, particularly when they are applied indiscriminately or without corresponding investment in training.

Noncompetes Are Set to Take Effect July 1, Fowler White Burnett, 8 May 2025, https://fowler-white.com/News/Read/ArtMID/1471/ArticleID/1072/Employer-Friendly-Changes-To-The-Law-Relating-to-Non-Compete-Agreements-Are-Set-To-Take-Effect-on-July-1-2025 (accessed 8 October 2025).

10. *See* FTC (2024).

11. *See*, for example, Meritas, Guide to Employee Non-Compete Agreements in Europe, Middle East and Africa, 2017, https://yust.ru/upload/iblock/4a5/meritas-guide-to-employee-non_compete-agreements-in-emea-2017.pdf (accessed 8 October 2025). Also, in New South Wales, Australia, key factors affecting the enforceability of non-compete clauses include the scope of the restriction, geographic coverage, duration, and the seniority of the employee. *See* Maguire & McInerney, Understanding Non-Compete Agreements: Balancing Rights and Restrictions, 7 May 2025, https://mandm.net.au/understanding-non-compete-agreements-balancing-rights-and-restrictions/ (accessed 8 October 2025).

12. *See*, for example, R. Goury, M. Hamon and J. Haure, France: Restrictive Covenants, Mayer Brown, 25 July 2024, https://www.mayerbrown.com/en/insights/publications/2024/07/restrictive-covenants-france (accessed 8 October 2025).

13. *See* Non-Compete Clauses in the UK and U.S.: Recent Trends, Covington, September 2024, https://www.cov.com/en/news-and-insights/insights/2024/09/non-compete-clauses-in-the-uk-and-us-recent-trends, and D. Mendel and A. Rentell, Reform of non-compete clauses in employment contracts – still on the horizon?, *Freshfields Risk & Compliance Blogs*, 22 July 2025, https://riskandcompliance.freshfields.com/post/102kv0q/reform-of-non-compete-clauses-in-employment-contracts-still-on-the-horizon (both accessed 8 October 2025).

14. *See* ASHA, Exploring Alternatives to Non-Compete Agreements, https://www.asha.org/practice/exploring-alternatives-to-non-compete-agreements/ (accessed 8 October 2025).

15. *See* Chambers and Partners, Poaching: are employee restrictions fair game?, 29 November 2016, https://chambers.com/articles/poaching-are-employee-restrictions-fair-game (accessed 8 October 2025).

III. The opt-out model: Design and advantages

17. This section introduces a contractual mechanism that allows employees to opt out of a non-compete clause by agreeing to repay part of their employer's training costs if they voluntarily leave their job within a specified period. The model aims to reconcile two objectives often treated as conflicting: (i) preserving firms' incentives to invest in training, and (ii) promoting labour mobility and competitive market dynamics.

1. The conceptual framework

18. Key actors and assumptions. Firms face a trade-off when investing in employee training. They weigh the expected productivity gains from skill development against the risk that employees may exit before those gains are realised. Employees, in turn, differ in their preferences for mobility, their budget constraints, and the value they place on the training offered. The broader labour market includes not only incumbent rivals but also potential new entrants seeking to attract skilled workers.

19. Mechanism design. The opt-out model is a contractual menu of options offered to the employees at the point of hiring or during employment.

- Option A: The employee accepts a standard non-compete clause, e.g. six months following termination, with no associated training repayment obligation.
- Option B: The employee opts out of the non-compete clause but agrees to repay a defined share of training costs if they leave the firm within a specified period, for example, up to 24 months after a training expenditure. [16]

20. Incentives and behavioural effects. For firms, repayment-backed agreements reduce the expected cost of attrition. This may make employers more willing to fund training and encourage them to focus on transparent, measurable, and targeted investments.

For employees, the opt-out model enables self-selection. Those who value mobility most, and can cover repayment if necessary, may choose the repayment option. Others may prefer the non-compete path, effectively trading mobility to avoid a repayment obligation. In either case, the opt-out model gives employees more outside options, improving their bargaining position in the labour market.

21. Expected market-level effects. The opt-out model may increase labour mobility, especially where training is transferable and valued by rival firms or new entrants. By lowering barriers to talent flows, it may also enhance competition, making entry and expansion more feasible for challengers. Greater cross-firm mobility can foster innovation through knowledge diffusion, a dynamic particularly relevant in fast-evolving sectors such as technology or life sciences. Finally, employees with credible outside options may secure improved wage outcomes, reflecting stronger bargaining power relative to a regime dominated by non-compete clauses.

22. Testable implications. If adopted, the model yields various empirically testable predictions. First, training incidence may potentially increase among firms using repayment-backed agreements, as employers may feel more confident investing in human capital when part of the cost can be recovered. Second, wages may rise for employees in sectors where outside options are especially valuable, reflecting stronger bargaining positions and mobility. Third, overall labour mobility may increase, though unevenly across industries and skill levels, depending on how easily training can be transferred or leveraged by rival firms. Finally, over time, reliance on broad non-competes would be expected to decline if repayment-based models gain legal recognition and regulatory endorsement.

2. How training costs would be defined

23. How should the price of employment freedom be set under the opt-out model? For the model to operate under fair and reasonable conditions, the training costs used to calculate repayment could, for example, follow the illustrative criteria below, which mirror existing TRAs. [17]

16. *See* the next section for further details on "How training costs would be defined."

- Objectively quantified: repayment amounts based on documented, auditable records of the actual training costs, such as invoices from external providers, receipts for course materials, software licences, or trainer fees, as well as verifiable internal cost allocations (e.g. proportion of trainer salary, facility use). [18] Estimates or arbitrary figures should be avoided to prevent overstatement and ensure transparency. Both parties should be able to verify the underlying cost data, reducing disputes and ensuring the repayment reflects genuine expenditure.
- Reasonably related to actual investment by the firm: repayment amounts reflecting only the incremental, verifiable costs of the specific training provided. This excludes general or sunk costs, such as standard onboarding, induction sessions, or compliance briefings, that all employees receive regardless of their role. This ensures the repayment is tied to skills development that enhances the employee's market value and is directly relevant to the employer's operational needs, rather than routine administrative or cultural integration activities.
- Time-declining: repayment amounts decrease as the employee remains with the firm, e.g. 100% if they exit within 3 months, 50% at 12 months, and 0% after 24 months. This declining schedule reflects the economic logic of amortisation: over time, the firm gradually recovers the value of its training investment through the employee's productivity. At the same time, the training itself may become obsolete or depreciate, particularly in fast-evolving industries such as technology, AI, or finance.

Skills that were once firm-specific or high-value may become less relevant as tools, systems, or standards evolve. As such, the rationale for recovering the full cost of training diminishes with time. This is not only because the firm has already recouped part of its investment, but also because the training itself loses market value. Employers are generally expected to recognise and plan for this risk. [19]

24. Finally, it is noteworthy that not all training investments yield linear or uniform returns. In some settings, particularly where talent development follows a "portfolio logic" (e.g. in sports academies and R&D-intensive firms), a few high-performing employees may generate disproportionate returns that effectively subsidise the training of others (Miceli, 2020).

- Under the portfolio approach, the firm may set a zero "price of exit". Instead, it relies on the law of large numbers, where some employees' long-term productivity offsets the cost of others leaving early.
- The opt-out model, by contrast, introduces a contractual price of exit to correct potential distortions created by non-compete clauses. It is not about cross-subsidisation but about ensuring proportionality and preserving mobility. The opt-out model does not replace the portfolio logic but may complement it by introducing a fair and transparent mechanism for partial cost recovery at the individual level. [20]

3. Economic efficiency advantages over traditional non-competes

25. The opt-out model offers various economic efficiency advantages.

17. *See* The HR Booth, Employee Training Repayment Agreement: Can You Recover Training Costs if an Employee Leaves?, https://www.thehrbooth.co.uk/blog/hr-news/can-i-recover-the-cost-of-training-if-an-employee-leaves-my-company (accessed 8 October 2025).

18. Internal or informal training, such as shadowing or on-the-job learning, may be difficult to quantify. Ideally, such training would be valued using transparent and standardised costing methods, for example, by multiplying the average hourly wage of mentors or trainers by the estimated number of hours of instruction.

19. In an extreme case where specific training becomes rapidly obsolete, a departing employee may not be required to reimburse the cost. The firm would need to provide updated training regardless of whether it retained the employee or hired a replacement. Moreover, there would be no cross-subsidisation between employers, as the obsolete training would hold no value in the labour market.

20. For example, where returns are more uniform or the firm's retention rate is low and the expected number of high performers is too small to offset the total cost, the portfolio logic weakens, and contractual mechanisms such as repayment-based opt-outs may be needed to sustain investment incentives.

- First, it internalises the negative externality of premature exit. The employee compensates the firm for unrecovered training, rather than being barred from working elsewhere. In some cases, employees may be able to negotiate and pass this cost on to their new employers, e.g. in the form of a signing bonus.
- Second, it allows for efficient worker sorting. Individuals who place a higher value on mobility can self-select into the payback option. This reflects the diverse preferences and budget constraints of employees. Those with a strong preference for mobility and the financial means to cover repayment may opt out, while those facing tighter budget constraints may choose to retain the restriction and accept lower mobility, potentially shifting to roles or industries where the non-compete is less binding.
- Third, it mitigates potential anticompetitive effects. Instead of using wide-reaching non-compete clauses to protect their investment, firms would focus on specific, measurable training costs that can be recovered through the opt-out repayment. This means restrictions are narrower and more targeted, lowering the risk of blocking worker mobility or slowing the spread of skills across the market.

26. Repayment-based contracts may be easier to justify than non-competes under competition and labour law. [21] This is more likely when the repayment amount is proportionate to the employer's actual, verifiable costs, non-punitive, and documented. [22] Unlike non-competes, these agreements do not restrict an employee's ability to join a competitor. As a result, they are less likely to raise concerns about market foreclosure or wage suppression. Properly designed, they could be recognised by regulators as a "safe harbour" alternative — protecting genuine training investments while preserving worker mobility.

21. For example, the FTC (2024) banned non-competes but did not categorically prohibit other restrictive agreements, such as TRAs. *See* T. A. McGrath, A. Sherman, A. Gonzalez, R. Hou, Y. Choi and T. Rudra, A New Sheriff in Town: FTC Bans Non-Competes in First Competition Rulemaking, Linklaters, 16 May 2024, https://www.linklaters.com/en-us/insights/blogs/linkingcompetition/2024/may/a-new-sheriff-in-town_ftc-bans-non-competes-in-first-competition-rulemaking (accessed 8 October 2025).

22. *See* footnote 17.

4. Employee differentiation and fairness considerations

27. The model introduces differentiation between employees. Some may choose to remain under a non-compete, while others may opt to pay to leave. This reflects differences in individual preferences for mobility and budget constraints. Employees with a stronger desire for flexibility and the financial means to cover repayment are more likely to opt out. Those with tighter budgets or less interest in changing jobs could decide to stay bound by the restriction.

28. The following are examples of illustrative conditions to help ensure that the opt-out mechanism operates in a fair and reasonable manner.

- Equal access: Applying the same opt-out terms to employees in similar roles may reduce the risk of undue discriminatory treatment and reduce workplace tension.
- Standardised repayment amounts: Using repayment amounts based on job category or training level, rather than an employee's perceived value, can promote transparency and reduce the risk of arbitrary or biased pricing.
- Clear disclosure and documentation: Providing full information about costs, terms, and implications in writing can support informed consent and minimise the risk of misunderstandings or disputes.

29. The opt-out model reframes post-employment restrictions not as barriers to exit, but as contractual price tags on early departure, designed to protect firm investment without blocking labour market competition. The next section examines the competitive effects of this design, along with policy considerations and potential drawbacks.

IV. Competitive effects, policy considerations and disadvantages of the opt-out model

30. The opt-out model described above introduces a

hybrid approach to post-employment contracting. It preserves employer incentives to invest in training while mitigating the potential anticompetitive effects often associated with non-compete clauses. This section considers the opt-out model's likely competitive effects, examines its policy implications and disadvantages.

1. Labour market competition, entry, and workers' bargaining power

31. Non-compete clauses may restrict competition in labour markets by reducing the supply of skilled workers available to rival firms. Their widespread use, especially when applied broadly to mid- or low-skill workers, can depress wages, entrench incumbents, and discourage new firm entry (Krueger and Posner, 2018; FTC, 2024). In contrast, the opt-out model restores worker mobility and employer competition for talent, provided employees, or indirectly, their new employers, are willing to compensate the former employer for unrecovered training costs.

32. By substituting exclusion with pricing, the model allows labour markets to function more efficiently. Workers can move to where they are most productive (including to new entrants), while firms still recover specific investments. Crucially, it also encourages rival firms to compete on working conditions, pay, and training quality, rather than relying on legal barriers to retain staff.

33. This is particularly relevant in fast-moving sectors like tech or generative AI, where cumulative innovation depends on employee mobility (AdC, 2025). Restrictive non-competes in these environments may suppress cross-pollination of ideas and slow ecosystem growth. By contrast, the opt-out model could act as a pro-competitive enabler, making talent circulation more frictionless while maintaining contractual discipline.

34. The opt-out model may also strengthen workers' bargaining power at the point of contract negotiation. By improving mobility between rival employers, workers retain access to alternative job offers, strengthening the credibility of the external labour market as an outside option. This, in turn, enhances their leverage when negotiating salary, role, or conditions with their current employer. Unlike traditional non-competes, which are often imposed unilaterally and limit credible exit routes, the opt-out model introduces a more balanced contractual environment where workers have a say in the rules that govern their future mobility. That optionality reduces the coercive effect typically associated with post-employment restrictions.

2. Impact on investment in human capital and productivity growth

35. Training repayment mechanisms can incentivise firms to maintain or even increase investment in human capital. Firms may feel more confident in funding courses and certifications, and in some cases, even expanding their training budgets. This is because they can recoup part of the cost from employees who opt out of the non-compete clause and leave shortly after receiving the training.

36. Importantly, this incentive is self-limiting. Any repayment-backed training should be measurable and cost-justified. [23] That discourages the overuse of formal training as a pretext for locking in employees.

37. Moreover, because the opt-out model allows for a mix of employees bound and unbound by non-competes (see section III above), firms face an added layer of discipline. They may moderate training investments if they expect that many employees will not opt out, meaning only a fraction of the workforce would be contractually required to repay costs in the event of early departure. This dynamic reduces the risk of firms inflating training values to increase the cost of switching jobs for employees.

38. The opt-out model may support broader policy goals. This includes increasing the availability of upskilling, improving labour mobility, and stimulating dynamic reallocation of talent — all recognised drivers of productivity growth (Andrews and Garnero, 2025).

3. Policy considerations

39. From a policy standpoint, the opt-out model presents both a challenge and an opportunity. On the

23. *See* "How training costs would be defined" in section III above.

one hand, its use would require scrutiny to ensure that repayment amounts are reasonable, non-punitive, and non-discriminatory. On the other hand, it offers an alternative to sweeping bans or sector-specific carve-outs.

40. Policymakers could potentially encourage adoption of the opt-out model through illustrative measures such as the following. [24]

- Issuing guidelines or "safe harbour" criteria for acceptable repayment contracts (e.g. maximum duration, clarity of costs, proportionality). Clear guidelines would provide legal certainty for both employers and employees, reducing the risk of disputes and encouraging firms to design repayment terms confidently. Safe harbour criteria help ensure that repayment contracts are fair and reasonable, making the opt-out model more attractive and trustworthy as an alternative to broad non-compete clauses.
- Promoting disclosure and transparency rules requiring employers to offer opt-out terms in plain language and to document actual training expenditures. Transparency improves employee understanding of their rights and obligations under the opt-out model. When repayment costs are documented and communicated, employees are better equipped to make informed decisions about whether to exercise the opt-out option. This builds trust in the mechanism and encourages uptake.
- Treating blanket non-competes as likely anticompetitive, unless paired with meaningful opt-out or compensation mechanisms. By signalling that rigid non-compete clauses will face scrutiny or enforcement challenges, policymakers create an incentive for employers to adopt more flexible arrangements like the opt-out model. This shift reduces the reliance on restrictive covenants and promotes a competitive labour market where mobility and investment protection are balanced.

4. Advantages, risks and limitations of the opt-out model

41. Despite its advantages, the opt-out model is not without challenges. A balanced assessment must recognise both its risks and the mechanisms through which it can sustain investment in human capital. Properly designed repayment-based contracts can encourage firms to expand training opportunities, knowing that part of their investment is protected. At the same time, several risks and limitations warrant careful attention.

- Over-reported training costs: Employers may be incentivised to inflate or misrepresent training expenditures, creating excessive exit penalties that undermine the fairness and credibility of the opt-out model. This risk highlights the need for verifiable accounting standards and proportionality rules to ensure repayments reflect genuine, documented costs. [25]
- Asymmetric bargaining power: Employees could feel pressured to accept repayment obligations even when they undervalue the training received. If the choice between repaying costs or remaining bound by a non-compete is made at the point of exit, employees may face significant time pressure. They might accept repayment obligations they consider excessive simply to secure a new role quickly, especially if delaying could cause them to lose the offer. This risk is compounded by information asymmetry. For example, if the exact repayment calculation or supporting evidence is only disclosed late in the process, it could leave little scope for negotiation or verification.
- Fragmentation of contract practices: In the absence of guidelines or "safe harbour" criteria, different standards across firms or sectors may lead to legal uncertainty. A diversity of opt-out implementations may raise questions such as: Are all repayment clauses enforceable under labour or consumer protection law? Will courts require fairness and reasonableness checks on a case-by-case basis?

42. In sum, the opt-out model offers a market-based alternative to non-compete clauses: one that balances protection of firm incentives to human capital investment with workers' freedom to move. Its success will depend not only on contractual design and regulatory guidance, but also on whether firms and workers adopt the opt-out model as a credible and fair alternative to traditional non-competes. Table 1 below summarises the main advantages, risks

24. The opt-out model aligns with the spirit of recent enforcement trends set out in section II.

25. *See* "How training costs would be defined" in section III above.

and limitations of the opt-out model.

Table 1. Advantages, risks and limitations of the opt-out model

Advantages	Risks and limitations
Encourages firms to sustain or expand investment in training, as part of the cost can be recovered. Internalises the negative externality of premature exit, reducing free riding and aligning incentives between employers and employees.	Potential for over-reported or inflated training costs, undermining credibility and fairness.
Allows efficient worker sorting / self-selection. Employees valuing mobility can opt out, improving labour market efficiency.	Risk of asymmetric bargaining power if employees accept repayment obligations under time pressure, e.g. to secure a new role quickly. Information asymmetry and lack of transparency may make it difficult for employees to assess true repayment liabilities.
Mitigates anticompetitive effects of blanket non-competes, fostering innovation, and facilitating market entry for firms seeking skilled and experienced employees.	Fragmentation of contract practices and legal uncertainty in the absence of guidelines or "safe harbour" criteria.

V. Conclusions

43. This paper presents a training repayment opt-out model, whereby employees may choose to forgo non-compete clauses in exchange for agreeing to repay part of the employer's training costs if they leave within a defined period. This mechanism shifts post-employment restrictions from an all-or-nothing lock-in to a flexible arrangement, where employees can choose mobility by paying a clearly defined cost.

44. From an economic perspective, the model internalises exit-related costs, promotes efficient matching, and mitigates the potential exclusionary effects of non-competes on both rival firms seeking talent and workers seeking mobility. From a legal and policy perspective, it offers a contractually grounded alternative to blanket enforcement bans, aligning with principles of proportionality, transparency, and individual choice. While safeguards are needed to prevent abuse, this more flexible approach to contracts can support competition, innovation, and dynamic labour markets.

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