

## Major New Initiative Focuses on Anti-Competitive Employment Practices

The CtW Investment Group seeks to engage over 30 major companies concerning their use of anti-competitive employment practices, including non-competes, no-poach agreements, non-disclosure agreements, and mandatory arbitration. We are asking the board of directors of each company to:

- Review their company's employment contracting practices, including the use of any of the provisions listed above.
- Report the board's findings to shareholders before your next annual meeting.
- Commit to increased human capital management disclosure going forward.

Our initiative is motivated by both the recognition among institutional shareholders that a company's human capital is its most important asset, but one which is subject to too little disclosure, and the growing appetite among regulators to challenge the use of anti-competitive employment provisions particularly when those are applied to lower-wage workers. The recent settlements between fast food companies and state attorney's general over the use of no-poach agreements, as well as the bi-partisan calls to ban mandatory arbitration for employees evince the changing environment companies face. We are concerned that boards may not know how widespread the use of these contractual provisions are at their company, and may therefore not be aware of the potential regulatory, litigation, and reputational risks the company is thereby incurring.

Moreover, economic research strongly indicates that the widespread use of anti-competitive employment practices reduces productivity and growth. For instance, non-compete provisions limit entrepreneurship, since workers are mostly likely to try to go into business for themselves in an industry or occupation with which they are already experienced: economists have found that for the median state, enforcing non-competes more strictly results in 200 fewer new firms being formed per year.<sup>1</sup> Another study found that states enforcing non-competes gain 16 jobs when venture capital investment increases by 1%, while states that do not enforce such provisions (such as California) gain 56 jobs in response to the same increase.<sup>2</sup> Finally, non-compete provisions impair the ability of labor markets to generate efficient matches between employers and workers. The "goodness of fit" between employer and employee is a major source of value from the employment relationship, such that by constraining the ability of individual workers to seek out new opportunities, employers artificially limit the pool of potential matches available to them. In effect, the recruiting difficulties many employers report and attribute to a "skills shortage" is much more plausibly explained by the limits on workers mobility that employers themselves impose.<sup>3</sup>

This initiative launched on August 29, 2018, with letters to over 30 boards of directors, including the request for a response by September 30, 2018. A sample letter, as well as the list of focus companies, can be found below. For more information, questions, or further discussion please contact our Research Director Richard Clayton by email [richard.clayton@ctwinvestmentgroup.com](mailto:richard.clayton@ctwinvestmentgroup.com) or at (202) 721 6038.

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<sup>1</sup> Jessica S. Jeffers, "The Impact of Restricting Labor Mobility on Corporate Investment and Entrepreneurship" January 16, 2017.

<sup>2</sup> Sampsa Samila & Olav Sorenson, "Non-compete covenants: Incentives to innovate or impediments to growth" October 5, 2010.

<sup>3</sup> As Jordan Weissman notes, an actual skills shortage should be associated with rapid wage increases (as employers compete for workers) not extremely slow-to-non-existent wage increases, as the U.S. has experienced over the past decade. Jordan Weissman, "After All the Talk About a Skills Shortage in the U.S. Job Market, the Real Problem May Be an Employer Shortage" *Slate*, January 17, 2018.