

# What the FTC Non-Compete Rule Means for Companies & Next Steps

MAY 8, 2024

## TODAY'S PRESENTERS



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# The Final Rule

- **Blanket ban:** prohibits all future non-compete agreements with all workers.
- The rule is effective September 4<sup>th</sup>, 2024.
- **Two exceptions:**
  - (1) existing agreements with “senior executives” can continue to be enforced
    - “senior executive” defined similarly but more narrowly than SEC’s definition of “executive officer”
  - (2) business sales

# The Final Rule

- **“Non-compete agreement” broadly defined:**
  - Any term or condition of employment that “prohibits...penalizes...or functions to prevent a worker from” working elsewhere is prohibited.
  - **Likely prohibited:**
    - Forfeiture agreements, broadly written NDAs, non solicitations, or TRAPs
  - **Likely allowed:**
    - “Appropriately tailored” NDAs, non-solicitations, TRAPs
    - Garden leave provisions
    - Retention awards or other bonuses requiring repayment if the employee leaves

# The Final Rule

- **Notice for existing non-compete agreements:**
  - Employers are required to provide notice to all individuals (other than qualifying senior execs) with existing non-compete agreements
    - Must notify them that the agreements are no longer effective or enforceable
- **Preemption**
  - The rule supersedes all less restrictive local and state non-compete laws, but does not supersede laws that are more restrictive

# Legal Challenges to the Rule

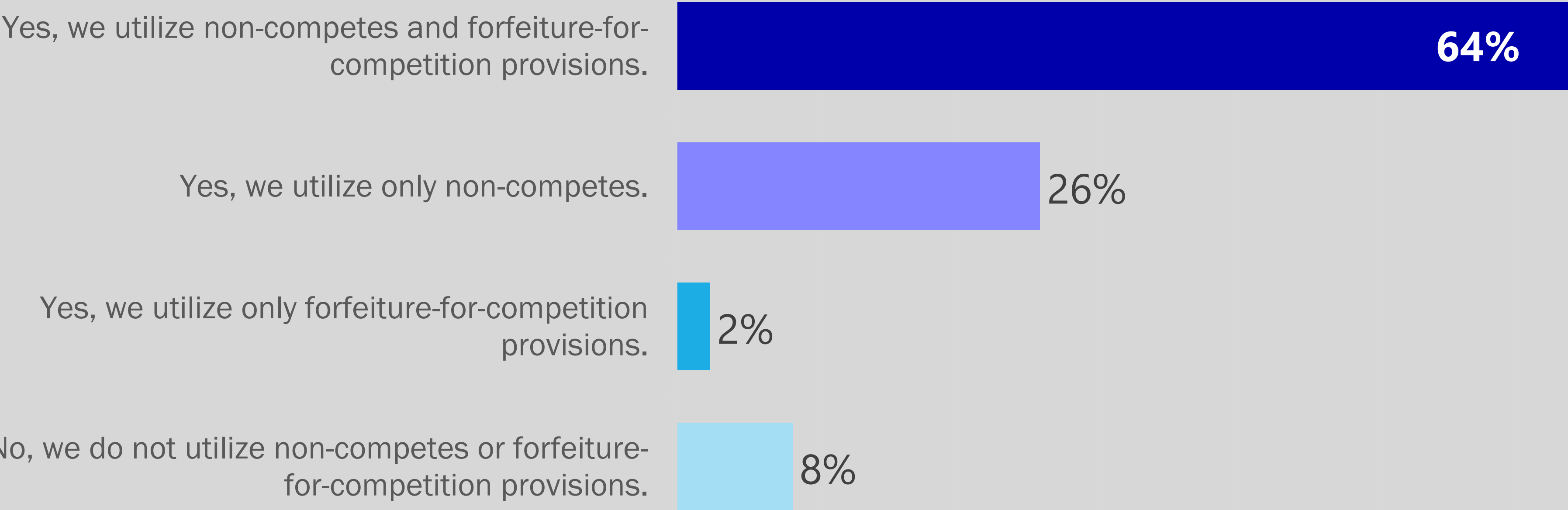
- Multiple lawsuits filed against the FTC claiming the FTC does not have the authority to issue the rule
- Lawsuits pending in two federal district courts in Texas
  - Same courts have previously thrown out joint employer rule, Biden EO raising minimum wage for fed contractors



# NEARLY ALL USE NON-COMPETE PROVISIONS

Q: Does your company utilize 1) non-competes or 2) forfeiture-for-competition provisions in equity award, severance or employment agreements in the U.S.?

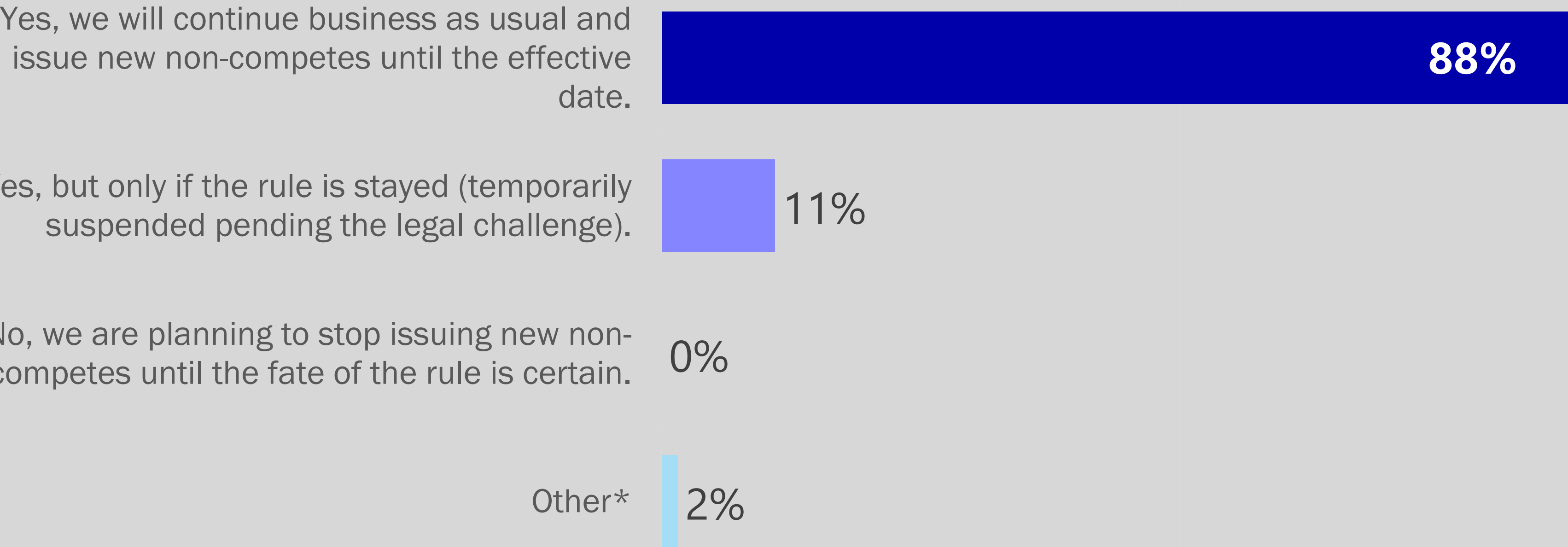
93 RESPONSES



# MOST WILL CONTINUE ISSUING NEW NON-COMPETES

Q: As of right now, does your company plan to continue issuing non-competes until the rule’s effective date?

69 RESPONSES





97% WILL KEEP EXISTING NON-COMPETES FOR COVERED EXECUTIVES

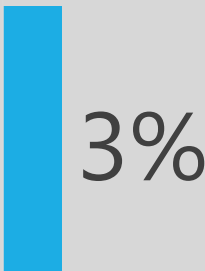
Q: As of right now, does your company plan to keep existing non-competes for covered executives as allowed by the rule?

69 RESPONSES

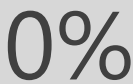
Yes, we will keep existing non-competes for all covered executives.



Yes, we will keep existing non-competes but only for certain covered executives.



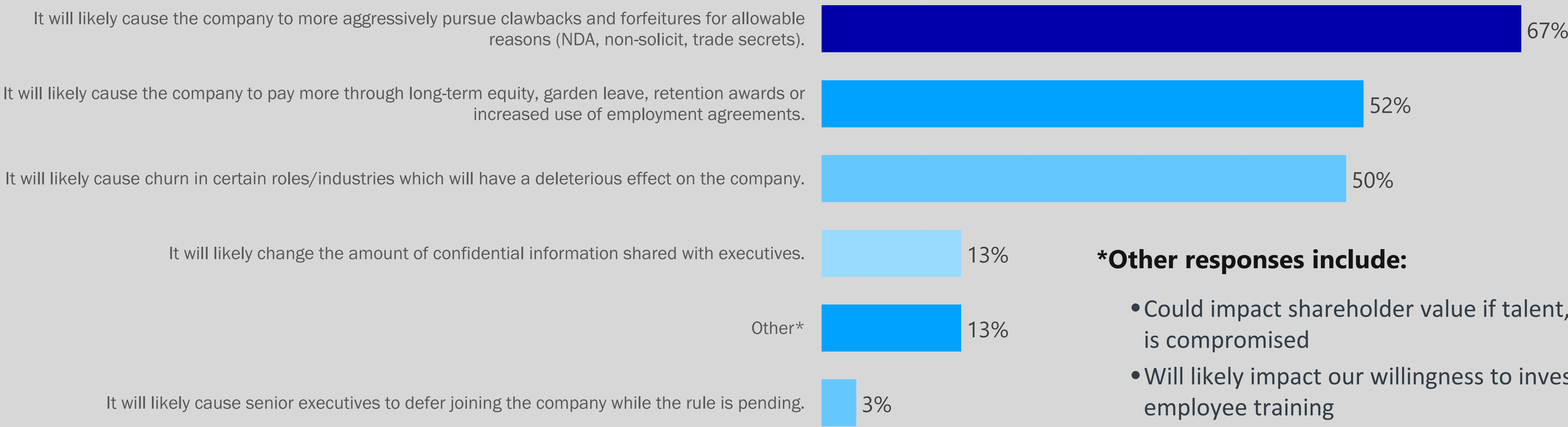
No, we likely won't require tenured executives to be bound by a non-compete while new executives aren't required to have them.



# MAJOR IMPACT TO TRADE SECRETS, COMPENSATION STRATEGY

Q: How do you think a total ban on non-competes would impact your talent or compensation strategy?

66 RESPONSES



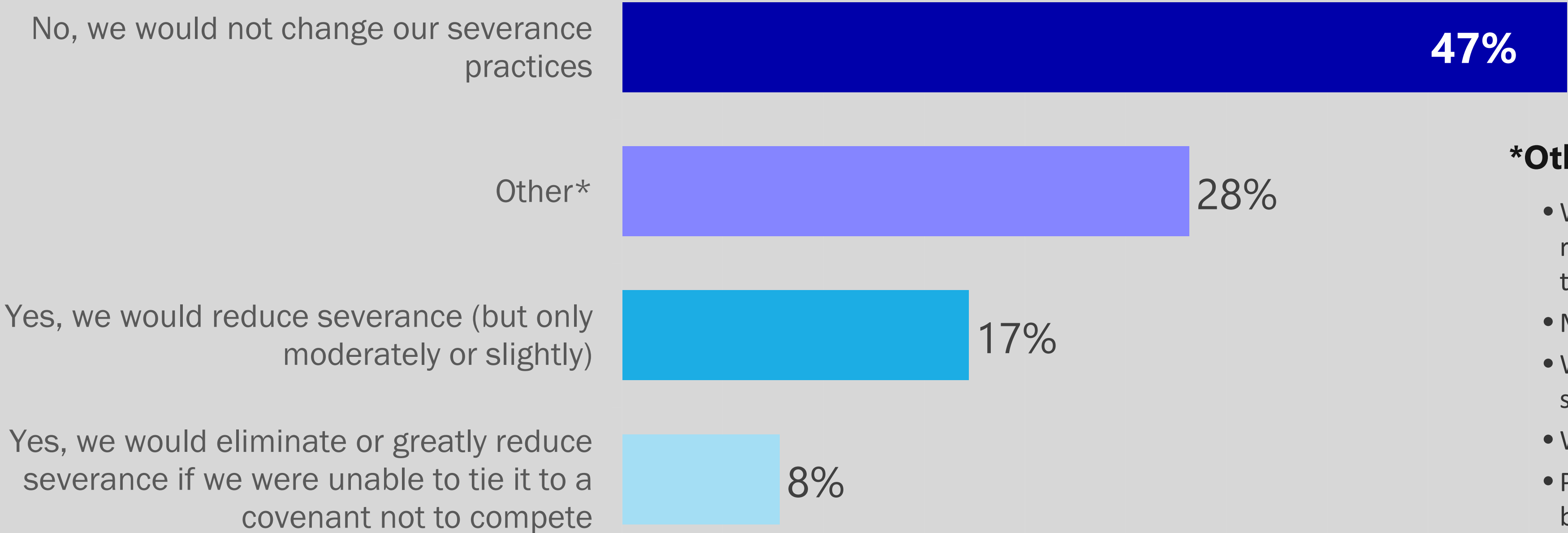
- \*Other responses include:**
- Could impact shareholder value if talent, innovation is compromised
  - Will likely impact our willingness to invest in employee training
  - Could make retirement rules more difficult to reach

**NOTE:** Respondents could select more than one choice; totals may not equal 100%

# OVER HALF AT LEAST CONSIDERING CHANGE TO SEVERANCE PRACTICES

Q: If you are unable to issue non-competes, would it change the way you think about severance or other consideration for a covenant not to compete?

69 RESPONSES



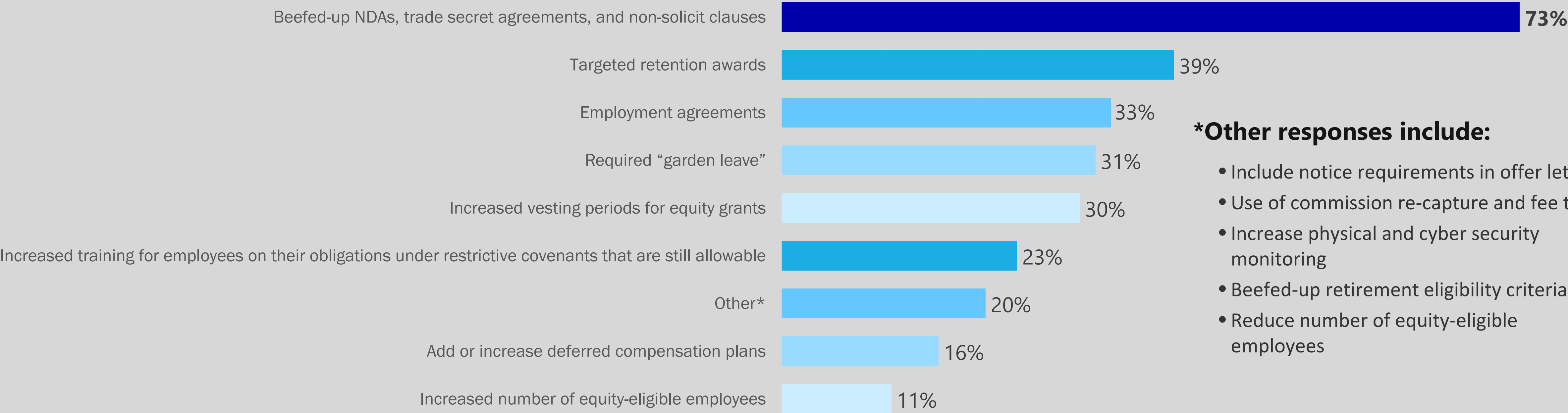
**\*Other responses include:**

- Will evaluate on a case-by-case basis, we rely heavily on employment agreements that lay out the specifics of severance
- May consider garden leave provisions
- We would include mitigation offsets for severance
- We would consider reducing our severance
- Presently, no changes being considered but it is a dynamic topic

# ALTERNATIVES: NDAS, RETENTION, EMPLOYMENT AGREEMENTS, GARDEN LEAVE

Q: If you are unable to issue non-competes, what options are you considering to protect talent, confidential information and other investments?

69 RESPONSES



- \*Other responses include:**
- Include notice requirements in offer letters
  - Use of commission re-capture and fee tails
  - Increase physical and cyber security monitoring
  - Beefed-up retirement eligibility criteria
  - Reduce number of equity-eligible employees

**NOTE:** Respondents could select more than one choice; totals may not equal 100%