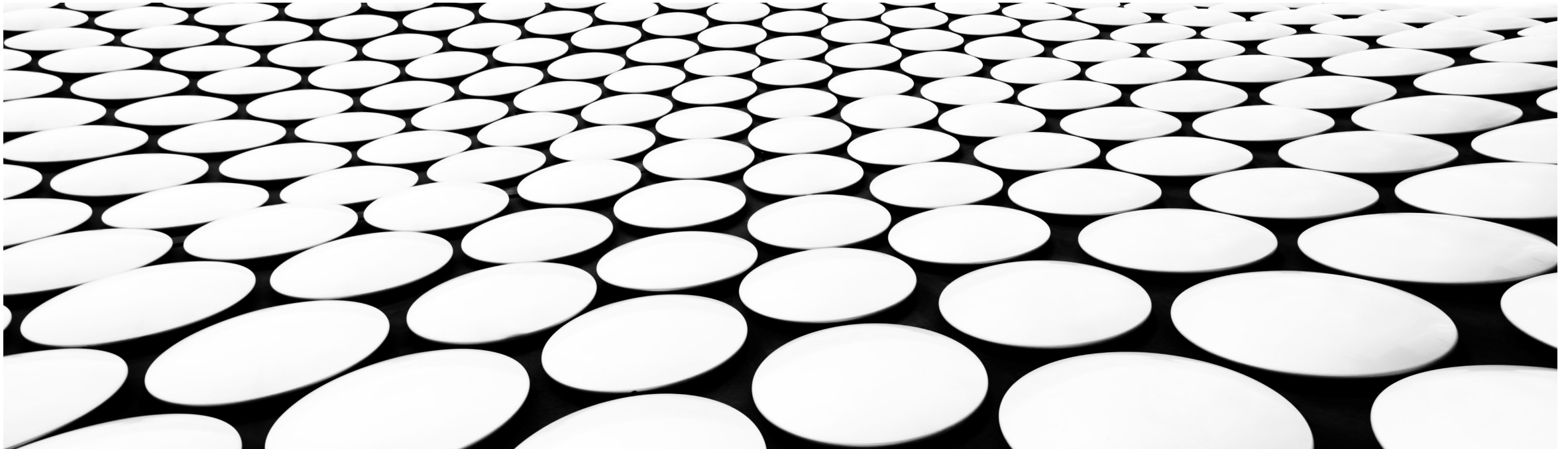




# NON-COMPETES & RESTRICTIVE COVENANTS SURVEY RESULTS

HR POLICY ASSOCIATION SURVEY RESULTS | JANUARY 2023

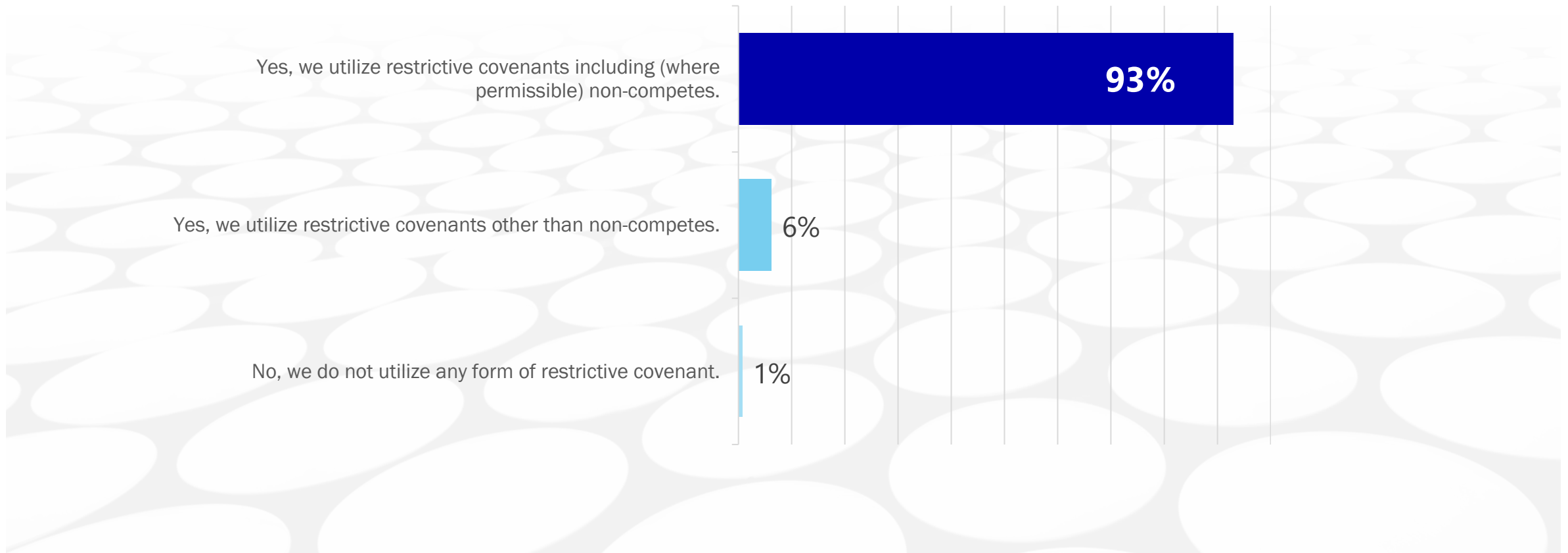
*128 Responses | Survey open January 11–26, 2023*



# USE OF RESTRICTIVE COVENANTS

# WIDESPREAD USE OF NON-COMPETES

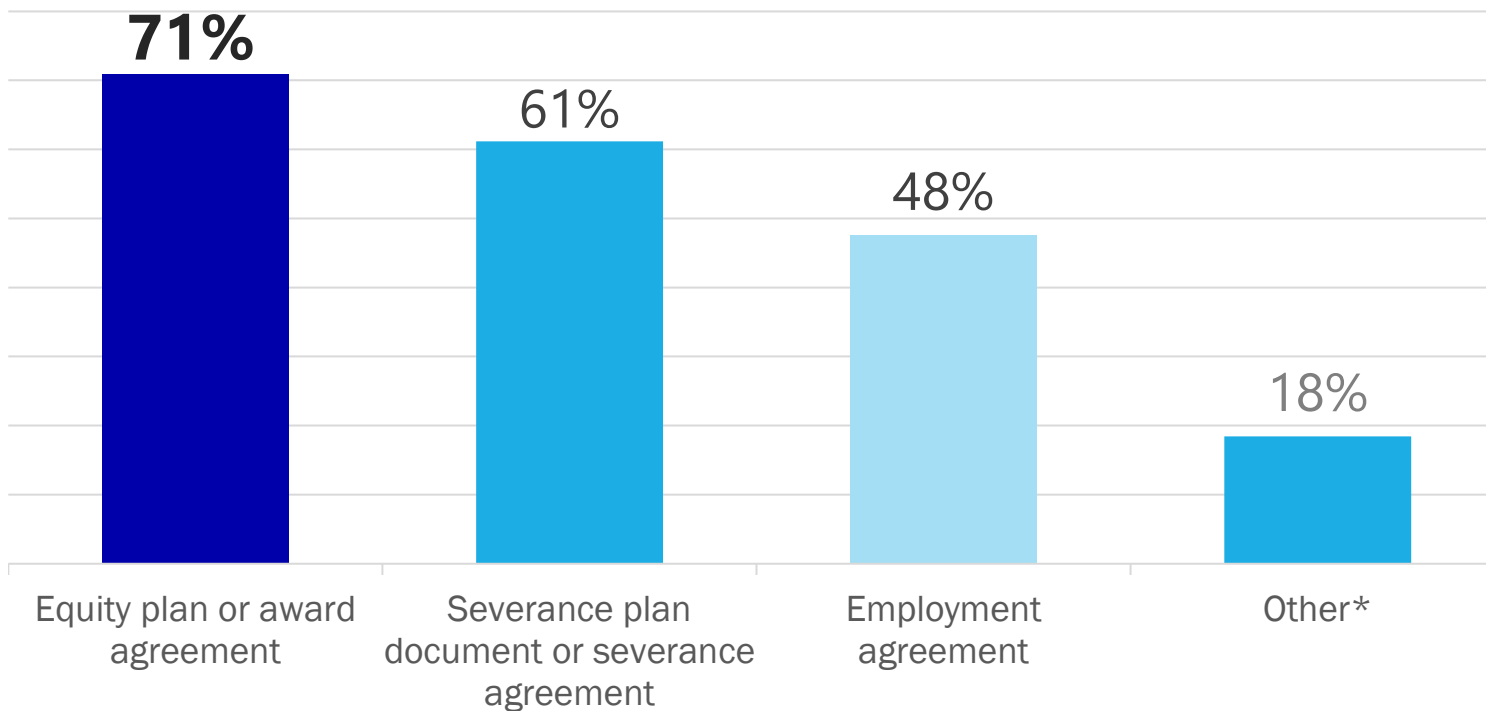
Q: Does your company utilize restrictive covenants such as non-competes, non-solicitations or forfeiture provisions in equity award agreements, severance agreements or employment agreements in the U.S.?



# USE OF NON-COMPETES

# VARIETY OF DOCUMENTS USED TO DETAIL NON-COMPETES

Q: If your company utilizes non-competes, in which document(s) are they detailed?



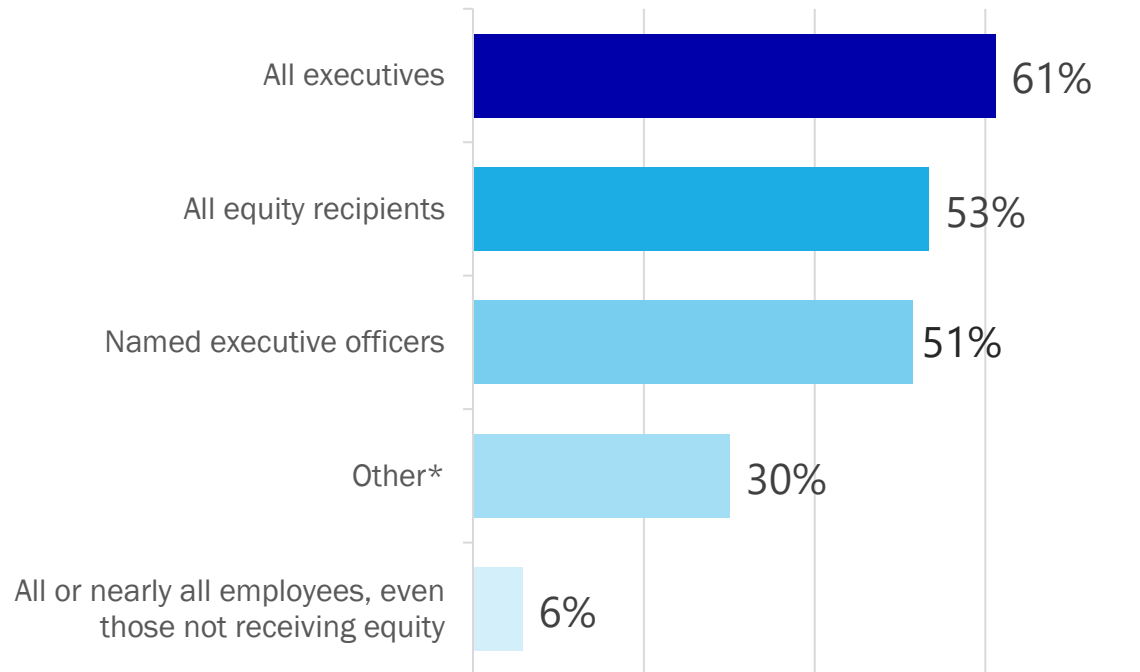
**\*Please specify other documents:**

- Separate agreement which enables ongoing updates (with consideration) without having to open employment agreements. (4)
- Supplemental executive retirement plan documents (4)
- Separate restrictive covenant agreement when hired and/or promoted to an officer role. (3)
- Offer letters (2)

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

# EXECUTIVES, EQUITY RECIPIENTS SUBJECT TO NON-COMPETES

Q: Which employees are subject to non-competes?



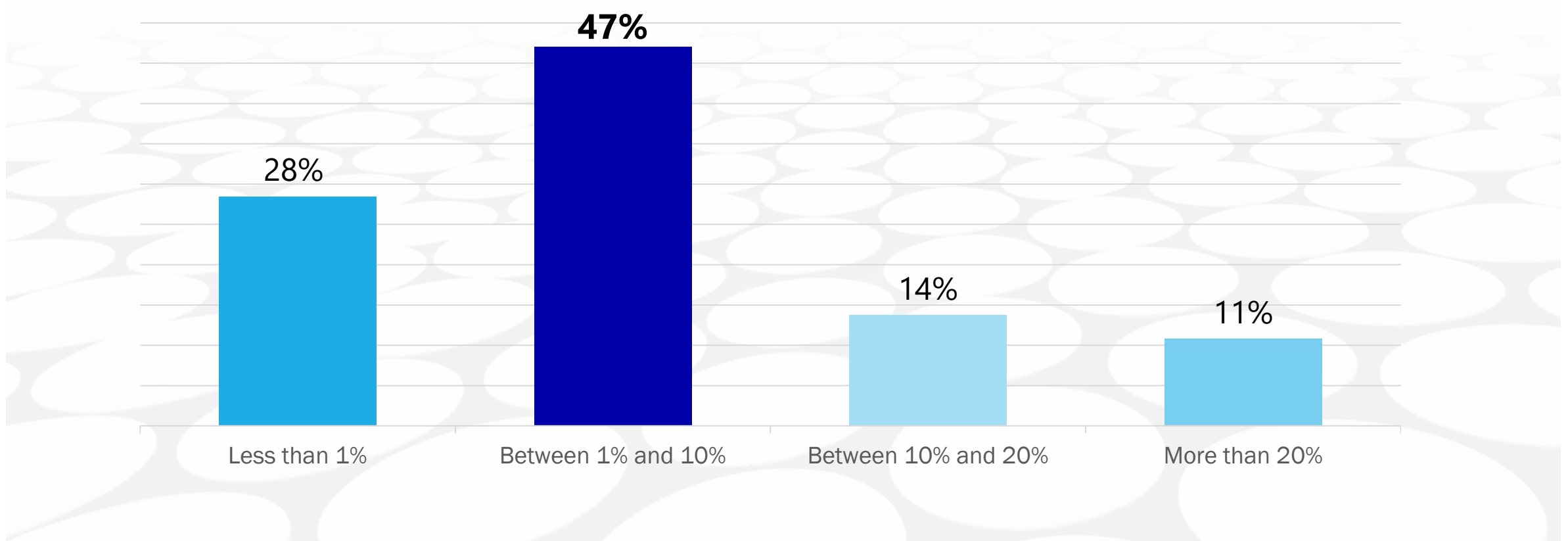
**NOTE:** Respondents could select more than one choice; totals may not equal 100%

**\*Please specify other employees:**

- Sales employees/ executives (11)
- Employees at or above specific leadership levels (e.g., VP and above) (9)
- On a selective basis (5)
- All officers (3)
- Positions with access to confidential and proprietary information (2)

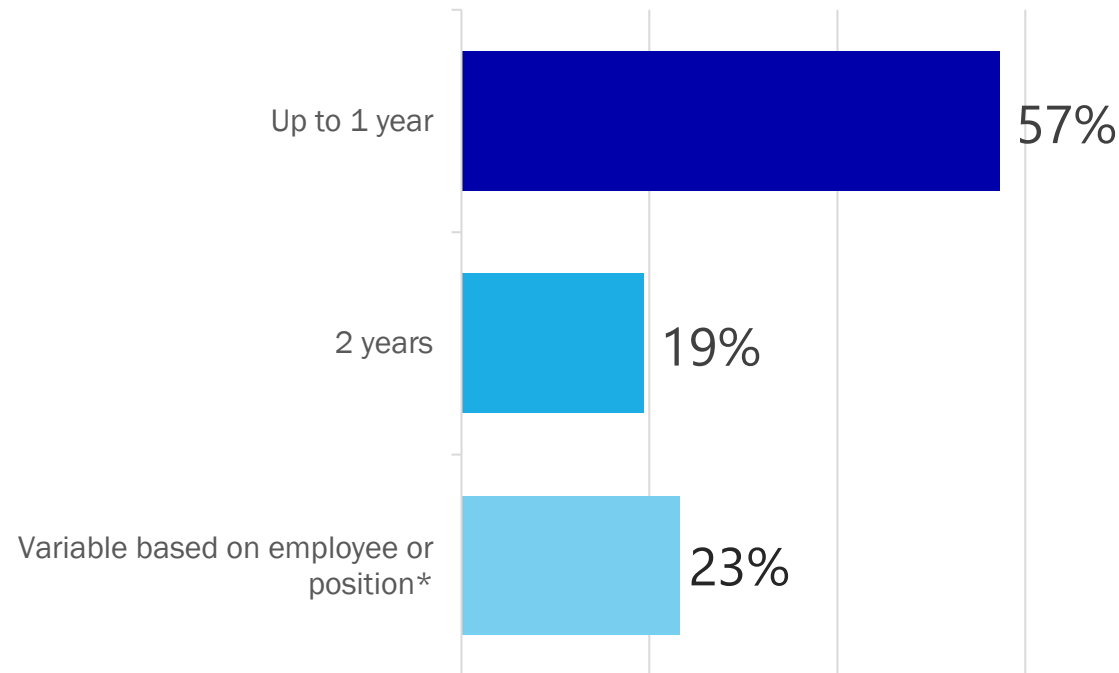
# 75% HAVE LESS THAN 10% OF EMPLOYEES ON NON-COMPETES

Q: Approximately what percentage of your U.S. workforce is subject to non-compete restrictions?



# NON-COMPETE COMMONLY IN EFFECT UP TO 1 YEAR AFTER DEPARTURE

Q: How long is the non-compete agreement in effect following the employee's departure?



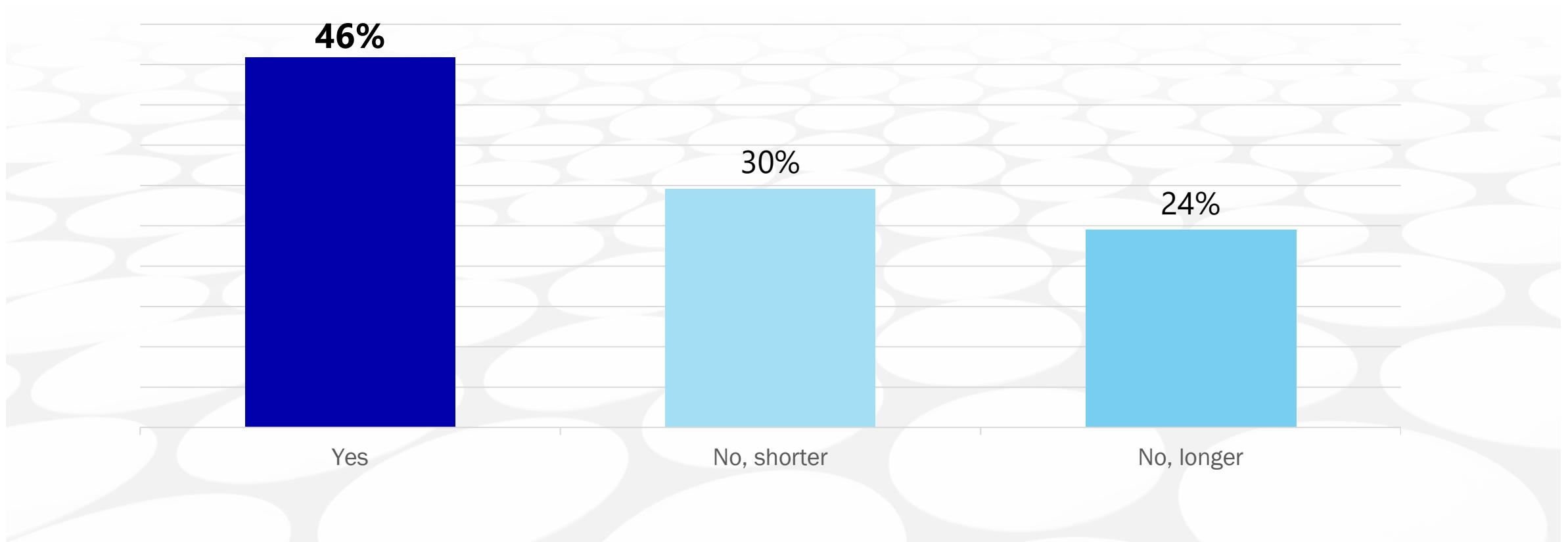
**\*Variable based on position, other factors:**

- 6 to 24 months, depending on position (e.g., 2 years for NEOs/C-Suite; 1 year for other officers; 6 months below officer level) **(19)**
- Subject to terms of separation agreement and vesting of equity **(6)**



## NON-COMPETE PERIOD OFTEN COVERS SAME PERIOD AS BENEFIT

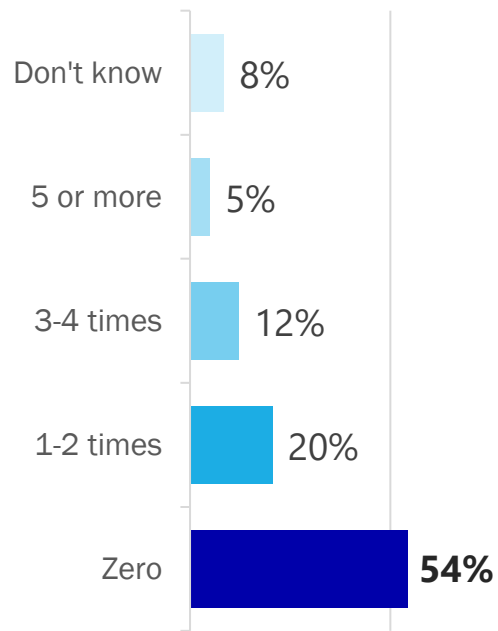
Q: If an employee is entitled to a severance benefit, does the non-compete period cover the same period as the benefit (e.g., a severance benefit of 2x salary would equal a non-compete of two years)?



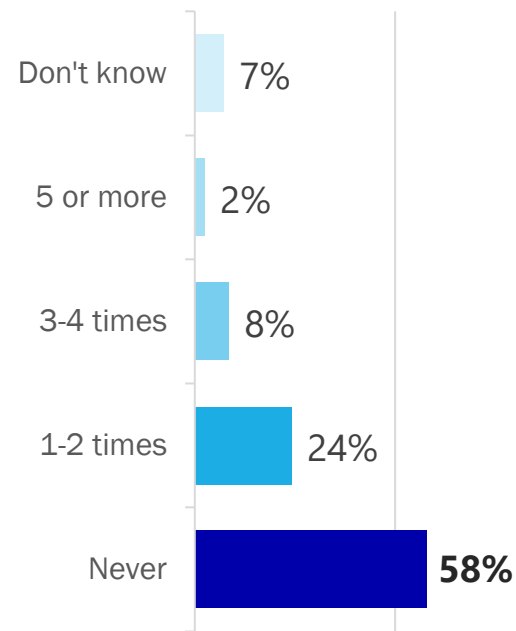
# NON-COMPETE NEGOTIATIONS, VIOLATIONS INFREQUENT

Q: In the past three years, how many times has:

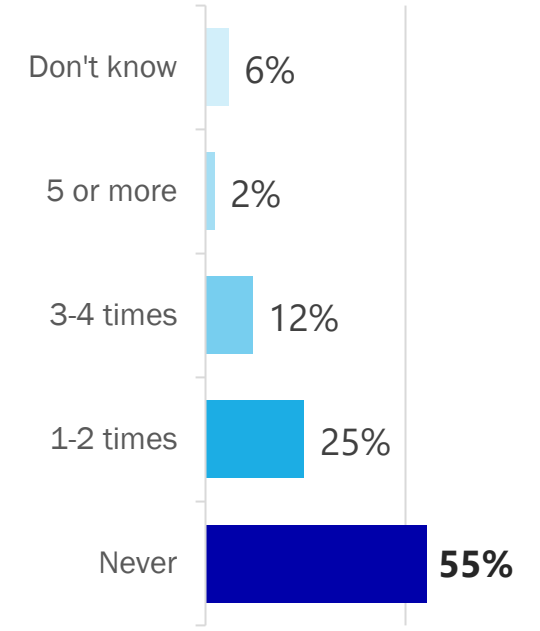
An employee joined a competitor based on a successful negotiation between your company and the competing company?



An employee violated a non-compete agreement (for example, because no negotiation was attempted or successfully concluded)?



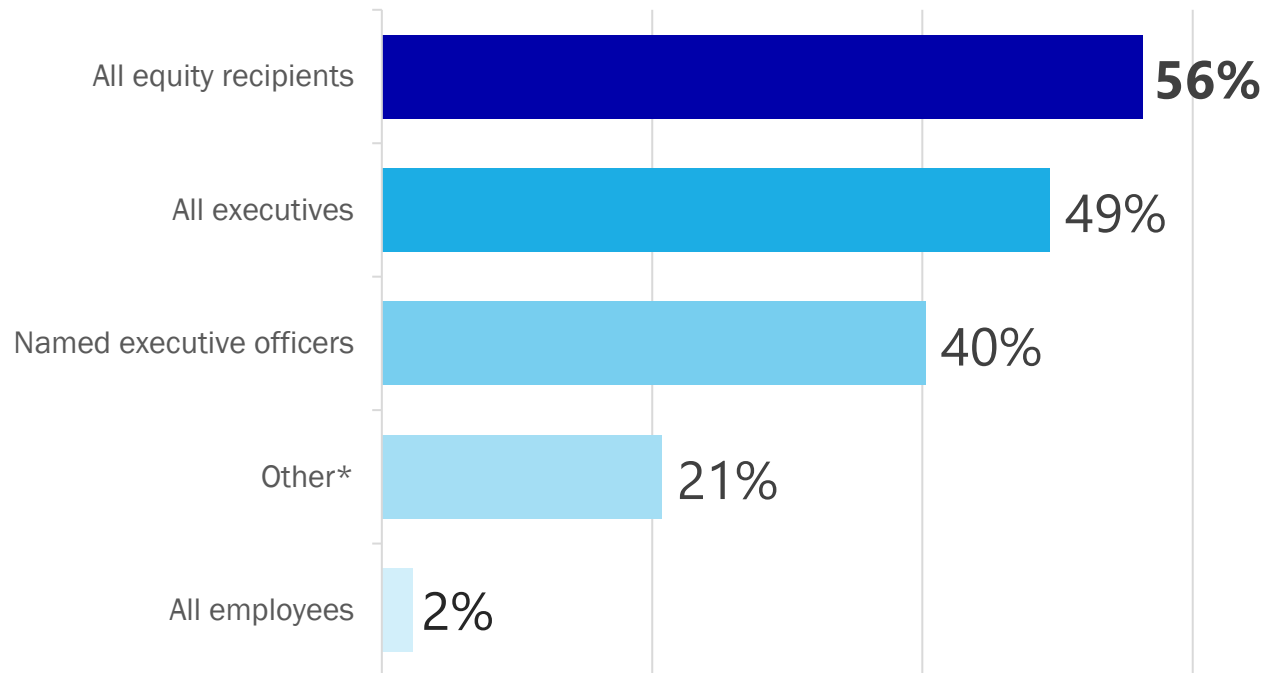
An employee violated a non-compete and your company pursued enforcement?



# USE OF FORFEITURE CLAUSES

# EQUITY RECIPIENTS, EXECUTIVES, OFFICERS SUBJECT TO FORFEITURE CLAUSES

Q: If your company utilizes forfeiture clauses to enforce restrictive covenants, which employees are subject to them?

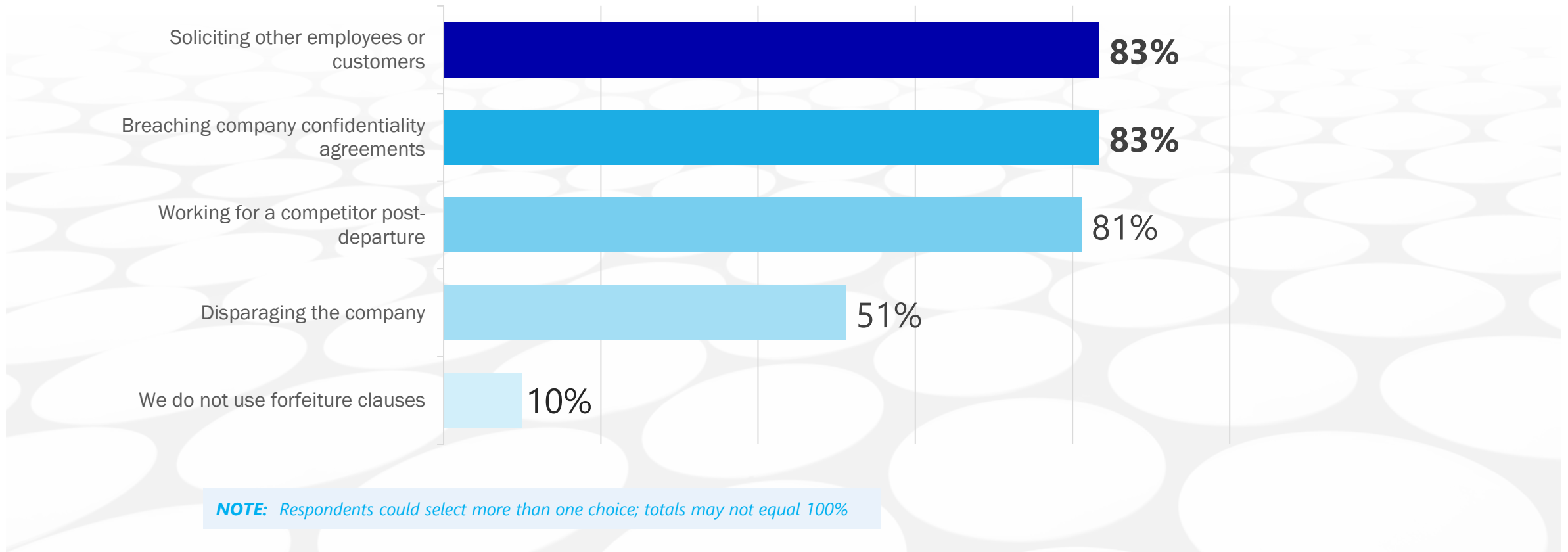


**Note: Forfeiture clauses are commonly included in severance agreements.**

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

# EMPLOYEE ACTIONS MAY RESULT IN FORFEITURE

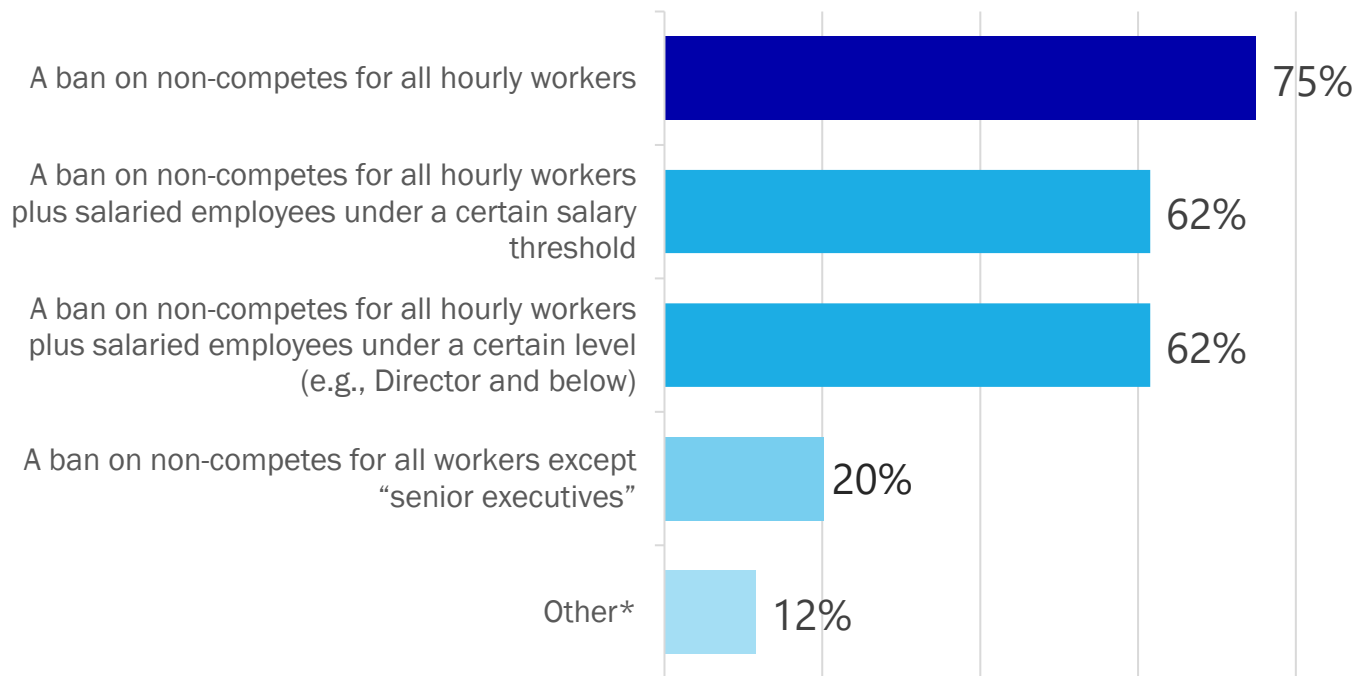
Q: Which actions on the part of the employee may result in forfeiture under the terms of the clause?



# FTC'S PROPOSED RULE

# WHERE DO WE DRAW THE LINE?

Q: With which of the following provisions of a final rule on non-competes would you be comfortable?



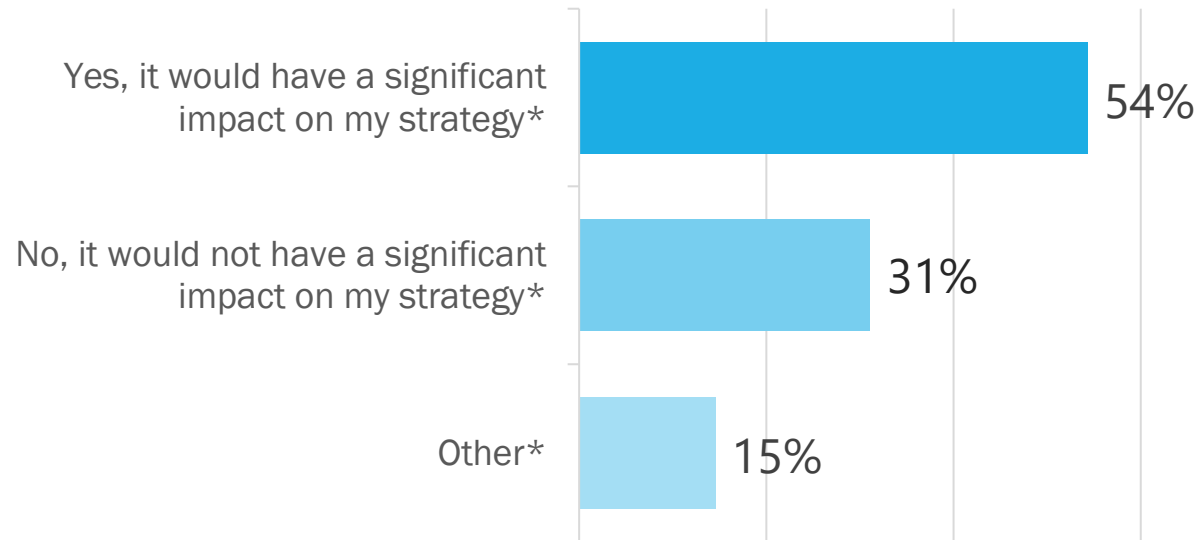
**\*Other, please specify:**

- We do not believe the FTC has the legal authority to prohibit non-competes on a national basis. (4)
- A ban on non-competes for all workers not in specific, company identified roles where access to proprietary knowledge exists (e.g., executives, unique scientific roles). (3)
- A ban on non-competes for anyone who does not receive equity/LTI.
- Ban on skilled, direct workforce.

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

# IMPACT ON TALENT AND COMPENSATION STRATEGY

Q: Would a total ban on non-competes have a negative impact on your talent or compensation strategy?



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

## \*Please explain your answer:

- The restriction would impact both talent and compensation strategies as well as our ability to protect proprietary information. **(25)**
- We use non-competes very sparingly **(12)**
- We would examine both our talent and compensation strategies and consider modifying them to retain talent. **(7)**
- We may need to explore changing our STI/LTI vesting approach for senior executives **(3)**
- Ban would have an initial ripple effect within a highly competitive industry. Once common, playing field would level to focus on talent retention strategy. **(2)**
- While it would have an impact on talent strategy, “significant” seems too strong a word. **(2)**
- Losing the non-compete provision would likely force us to more aggressively pursue clawbacks and forfeitures.