Subjective Beliefs about Contract Enforceability

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June 24, 2021

Abstract

This paper assesses the content, role, and adaptability of subjective beliefs about contract enforceability in the context of postemployment covenants not to compete (“noncompetes”). We show that employees of all stripes tend to believe that their noncompetes are enforceable, even when they are not. We provide evidence in support of both supply- and demand-side stories that explain employees’ persistently inaccurate beliefs. Moreover, we show that mistaken beliefs are not innocuous. Rather, believing that unenforceable noncompetes are enforceable causes employees to forgo better job options and to perceive that their employer is more likely to take legal action against them if they choose to compete. However, despite mobility-reducing effects ex post, we find no evidence that mistakenly believing that a noncompete is enforceable causes employees to be more likely to negotiate over such provisions ex ante. Finally, we use an information experiment to simulate an educational campaign that informs employees about the enforceability (or lack thereof) of their noncompete. We find that this information matters a good deal to employee beliefs and prospective behavior; however, information alone does not appear to entirely eliminate an unenforceable noncompete as a factor in the decision whether to take a new job. We discuss the implications of our experimental results for policy debate regarding the enforceability of noncompetes.

† We gratefully acknowledge support from the Ewing Marion Kauffman Foundation Grant 20151449 as well as various units at the University of Michigan, which funded our data collection efforts. We thank Rachel Arnow-Richman, Meirav Furth-Matzkin, David Hoffman, Mike Lipsitz, Ryan Nunn, Eric Posner, Roseanna Sommers, and Tess Wilkinson-Ryan for very helpful comments on earlier drafts. Patrick Balke and Justin Frake provided excellent research assistance. We are also grateful for the feedback of many seminar participants at UT Austin, UCLA, Georgetown, George Mason University, ESMT Berlin, CUNY Baruch, Columbia University, the University of Michigan, Hitotsubashi University, Syracuse University, and the University of Maryland.

Electronic copy available at: https://ssrn.com/abstract=3873638