

## The FTC Switches Gears on Noncompete Enforcement

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**T**he Federal Trade Commission's (FTC) nationwide ban on virtually all noncompete agreements in the employment context was expected to take effect in Sept. 2024.

Losses in litigations challenging the non-compete ban and a change in the presidential administration have led the FTC to abandon its fight to salvage the noncompete ban and to instead refocus on challenging individual employer noncompete agreements.

The FTC approved the rule banning noncompete agreements on April 23, 2024, with the three Democratic commissioners voting in favor of the rule and the two Republican commissioners voting against the rule, primarily because they did not believe that the FTC had the authority to issue the rule.

Several litigations were filed challenging the FTC's authority to adopt a rule banning non-compete agreements, which have traditionally been regulated by state law.

In *Ryan LLC v. Federal Trade Commission*, the United States District Court for the Northern District of Texas initially enjoined enforcement



of the noncompete rule and then issued a final decision in late Aug. 2024 concluding that the FTC exceeded its statutory authority in implementing the rule and that the rule was arbitrary and capricious.

Just a week before the *Ryan* ruling, the United States District Court for the Middle District of Florida granted an injunction in *Properties of the Villages, Inc. v. Federal Trade Commission*, holding that the plaintiff was likely to succeed on its claim that the FTC rule was unenforceable under the major questions doctrine.

The FTC under the Biden administration promptly appealed both decisions. After President Trump's inauguration, however, the FTC asked the appellate courts to hold the appeals

in abeyance while the FTC reconsidered its position in light of the change in administration.

On Sept. 5, 2025, the FTC (with a new Republican majority) filed papers withdrawing both appeals. The practical effect of the withdrawal of the appeals is that the lower court rulings that the FTC did not have authority to issue the rule stand and the nationwide rule banning noncompete agreements will not take effect.

The FTC walked away from the rule banning noncompete agreements not because the FTC now believes that noncompete agreements can never be illegal, but because the new, Republican-majority did not believe the agency had the authority to issue such a wide-ranging rule.

Instead, the FTC will continue to engage in targeted enforcement actions against specific employers that the FTC believes are using post-employment restrictive covenants in ways that violate competition and labor laws.

On Feb. 26, 2025 (nearly six months before withdrawing its appeals), the FTC Chairman directed the agency to prioritize prosecuting unfair labor market practices that harmed workers, including noncompete agreements that contained “unnecessary, onerous and often lengthy restrictions” and formed a “Joint Labor Task Force” to carry out these goals. (Directive Regarding Labor Markets Task Force | Federal Trade Commission).

At the same time as it withdrew its appeals of the decisions striking down the rule banning noncompete agreements, the FTC took several steps to address its ongoing concerns about noncompete agreements.

First, on Sept. 4, 2025 (the day before withdrawing its appeals), the FTC approved a complaint against—and a settlement with—Gateway Services (Gateway), a pet cremation company.

The FTC asserted that Gateway required all newly hired employees (except those in California) to sign noncompete agreements precluding the employees from working in the pet cremation industry anywhere in the United States for one year after termination of employment without any “individualized consideration” of the employees’ roles in the company.

The FTC alleged that Gateway imposed its noncompete agreement on hourly workers as well as highly compensated employees and required employees who had been terminated when Gateway closed facilities or otherwise reduced its labor force to abide by the noncompete provisions.

The FTC concluded that Gateway used the noncompete agreements to suppress, prevent, or minimize competition. As part of the settlement, Gateway agreed, among other things, to stop entering into or enforcing the offending noncompete agreements and to notify impacted employees that their noncompete agreements are not enforceable. (FTC Takes Action to Protect Workers from Noncompete Agreements | Federal Trade Commission.)

Second, also on Sept. 4, 2025, the FTC issued a request for information about employers using noncompete agreements. The request asked members of the public to submit the names of any employers using noncompete agreements

as well as information about the noncompete agreements used by those employers.

For example, the request seeks information about the reasons (if any) an employer has given for using noncompete agreements; the roles, positions or job functions for which the employer uses noncompete agreements; the salary ranges of those subject to noncompete agreements; the terms of the noncompete agreements; and whether (and if so how) the noncompete agreements “harm” employees who might take other jobs or “limit” employees from starting their own businesses.

The request for information also asks about employers using non-solicitation agreements that limit employees’ ability to work with the employer’s former customers or former employees. Notably, the request is one-sided and does not seek information from employers about the potentially legitimate use of noncompete agreements. (Federal Trade Commission Issues Request for Information on Employee Noncompete Agreements | Federal Trade Commission.)

Third, on Sept. 10, 2025, the FTC Chairman issued letters to a number of large healthcare companies and staffing firms raising concerns about noncompete agreements in the

healthcare field unreasonably limiting employment opportunities.

The letters assert that noncompete agreements can limit employment options for important roles in the industry and restrict patients’ choices of medical providers, particularly in rural areas. The letters “encourage” the recipients to review their employment agreements, and particularly their noncompete and other restrictive covenant provisions, to ensure that they are narrowly tailored and comply with applicable law. (FTC Chairman Ferguson Issues Noncompete Warning Letters to Healthcare Employers and Staffing Companies | Federal Trade Commission.)

The FTC has moved assertively to try to undercut any suggestion that the FTC’s walking away from its own rule banning noncompete agreements means that it will not monitor and police noncompete provisions.

Employers should be aware of the legal limits of post-employment restrictions, and employers with broad or untargeted noncompete agreements with employees should remain concerned about potential FTC enforcement actions.

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