Employee Non-Competes: Where We Stand Today

Labor & Employment Law Update

By Stephen Pauwels on July 24, 2025

A little less than a year ago, businesses were scrambling to get ready for the then-impending Federal Trade Commission's (FTC) final rule that would have blocked nearly all non-compete agreements between employers and employees. A Texas federal district court put all of that on hold in August 2024, holding that the FTC didn't have the authority to issue the non-compete rule.

Since then, the issue has largely faded from headlines as businesses continued on as before the FTC rule. Questions remain, though, about the status of the rule and steps states are taking to regulate (or not) this popular tool in employers' arsenals to protect their hard-earned goodwill and prevent unfair competition in the market.

Non-Competes and the FTC's Rule

Succinctly, non-competes prevent departing employees from taking jobs with competitors to protect employers' valuable proprietary information and customer relationships. Amid growing concerns that non-competes do more to hurt employees than help employers, the Biden-era FTC adopted a rule that would have invalidated nearly all existing employee non-competes and banned all new employee non-competes. Lawsuits challenging the FTC's rule quickly followed and the Texas district court prevented the FTC from enforcing the rule.

The Biden-era FTC appealed the case in October 2024 but the matter stalled after President Trump took office in January. On July 11, 2025, the Commission's request for a 60-day stay of the appeal was granted on the heels of a 120-day stay requested in March 2025. Despite the stay, the FTC is expected to ultimately abandon its non-compete rule.

Patchwork of State Laws Remain in Place

With the likely death of the national non-compete rule, employers are left to sort through the array of approaches states have for non-compete agreements. While we'll leave the specific state-by-state contours for another time, there are some universal concepts that are helpful for employers to understand how non-competes are analyzed in states where they haven't been banned outright:

- **Reasonable**: The restrictions on the employee have to be "reasonable," which means they can't prevent an employee from competing for too long (typically two years is ok), in too big of a geographic area, or from holding a job with a competitor that didn't relate to the job the employee held with the company.
- **Consideration**: A growing trend is to look more closely at what the employee is being given in exchange for the promise not to compete after their employment ends. Some states find that at-will employment of any duration is enough, others require either at-will employment for some period or some additional pay or both.
- **Reason for Termination**: Irrespective of consideration, some states will refuse to enforce a non-compete where they employee was fired without cause.
- **Protectable Interests**: Lastly, states generally require that non-competes are no more restrictive than is needed to protect the employer's interests in its goodwill, customer relationships, protectable information, or a fair competitive market. Where the employer doesn't have a protectable interest—such as for *prospective* customer relationships in some states—non-competes are less likely to be enforced.

Beyond these base considerations lie many more, making this area fraught for employers to venture into without learned legal counsel to help craft non-compete agreements that are tailored to the circumstances the employer is faced with and the applicable state laws.