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FTC Takes on Noncompete Agreements as New State Laws Take Effect

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Noncompete agreements are the focus of a new enforcement activity by the FTC this month while states continue to restrict their use. Below are key takeaways for all employers who use noncompete agreements and further background on recent developments.

Key Takeaways for Employers

- **Recent Federal Trade Commission (FTC) activity reveals its strategy and pivot from rulemaking to enforcement:** After court rulings shelved the 2024 Final Rule banning noncompetes nationwide and the FTC's dismissal of its appeals challenging those decisions, the agency is prioritizing case-by-case enforcement and public input. In September 2025 the FTC issued an administrative complaint and proposed consent order (Gateway Services), a series of letters to healthcare employers and staffing firms warning against the use of unfair or anticompetitive noncompetes, plus an RFI on employer noncompetes; the FTC also dismissed appeals of rulings against its 2024 rule.
- **State momentum continues:** Although the FTC's noncompete ban is in the rearview mirror, states continue to be active in establishing new laws that restrict how and whether employers can use noncompetes as part of their business strategy.
- **Employers must adopt best practices:** All employers, especially multi-state employers, should monitor evolving bans, wage floors, and notice requirements and update their agreements and processes accordingly.

Authors

Ian L. Barlow
Of Counsel
202.719.4994
ibarlow@wiley.law

Olaoluwaposi O. Oshinowo
Of Counsel
202.719.4275
ooshinowo@wiley.law

Savanna L. Shuntich
Special Counsel
202.719.4413
sshuntich@wiley.law

Victoria N. Lynch-Draper
Litigation Practice Attorney
202.719.3304
vlynch-draper@wiley.law

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Federal Activity – Enforcement Accelerates in 2025

In his first month as FTC Chairman, Andrew Ferguson convened an agency-wide task force to address unfair, deceptive, and anticompetitive practices in labor markets; stated that noncompete agreements fall under FTC jurisdiction; and described them as "unnecessary, onerous, and often lengthy restrictions on former employees' ability to take new jobs." In early September 2025, the FTC announced several significant steps: an administrative complaint and proposed consent order targeting certain noncompete practices, letters to healthcare employers and staffing firms warning them against use of unnecessarily restrictive noncompete agreements, a Request for Information (RFI) seeking public comment on employer noncompetes, and the dismissal of appeals from rulings that had blocked its noncompete rule. Together, these moves signal the FTC's continued commitment to curbing overbroad noncompete usage through enforcement and public advocacy.

As the FTC's position on noncompetes becomes clearer, more states have begun to draw clear lines concerning where they stand regarding the legality of noncompetes. Some new state laws restrict or ban noncompetes outright, while others create restrictions based on occupation or annual compensation.

Based on recent activity in the area, all employers (particularly multi-state employers) should revisit their agreements for compliance with changing state law and the FTC's current posture.

Background – The FTC's Noncompete Rule and Prior Enforcement Actions

The FTC began formally studying noncompetes during the first Trump Administration. At a January 2020 workshop titled "Non-Competes in the Workplace: Examining Antitrust and Consumer Protection Issues," FTC staff hosted a panel on whether the FTC should initiate rulemaking regarding noncompete clauses. Historically, private-sector noncompetes were policed primarily under state statutes and common law. In 2021, President Biden issued an Executive Order encouraging the FTC to exercise its statutory rulemaking authority to curtail unfair noncompete use.

In 2023, under then-Chair Lina Khan, the FTC brought several enforcement actions alleging that the defendants' use of noncompete agreements constituted unfair methods of competition in violation of Section 5 of the FTC Act. These actions were brought against companies using noncompete agreements with security guards and three companies in the glass manufacturing industry, which the FTC alleged was a highly concentrated industry with significant barriers to entry and expansion.

On May 7, 2024, the FTC issued a Final Rule declaring most noncompete clauses an "unfair method of competition" under Section 5 and relying on Section 6(g) of the Federal Trade Commission Act (15 U.S.C. § 45; § 46(g)). This novel use of the FTC Act would have made a nationwide impact on American businesses, invalidating agreements already in existence as well as new agreements with noncompete clauses. However, two weeks before the Final Rule's effective date, a U.S. district court enjoined the rule, finding the FTC had exceeded its authority in promulgating it.[1] Subsequent litigation further impeded implementation.

Under New Leadership, the FTC is Renewing Its Enforcement Strategy and Pivoting Away from Rulemaking

President Trump's new FTC Chairman, Andrew Ferguson, has not defended the Biden-era FTC regulation and last week filed voluntary dismissals of the appeal of the two injunctions issued against the regulation. The FTC publicly described the regulation as "a blanket nationwide ban that exceeded the Commission's regulatory power by purporting to prohibit nearly all noncompete agreements across all industries within the Commission's jurisdiction without regard for their likely effects in specific contexts."

However, Chairman Ferguson has indicated a similar interest in curbing what it perceives as the abusive use of noncompetes through enforcement actions.

On February 26, 2025, Ferguson issued a Directive establishing a Joint Labor Task Force (Bureaus of Competition, Consumer Protection, Economics, and the Office of Policy Planning) to investigate and prosecute unfair or anticompetitive labor-market conduct. The Directive identified noncompete agreements as conduct within the FTC's ambit when used to impose unnecessary, onerous, and lengthy restrictions.

The FTC has begun implementing its Directive with two significant actions in the past week. On September 4, 2025, the FTC made public an administrative complaint against Gateway Services Inc. and a proposed consent order that would require the company to:

- Immediately cease enforcing noncompete agreements that currently bar nearly 1,800 employees from working in the pet-cremation services industry anywhere in the U.S. for one year after leaving;
- Limit non-solicitation provisions; and
- Eliminate the use of noncompetes for most employees going forward.

The proposed order contemplates a limited exception for directors, officers, or senior employees in connection with equity-based compensation or a sale of a business.

On September 10 the FTC announced it issued letters to healthcare employers and staffing firms "urging them to conduct a comprehensive review of their employment agreements—including any noncompetes or other restrictive agreements—to ensure they are appropriately tailored and comply with the law."

Also in September, the FTC issued an Request for Information Regarding Employer Noncompete Agreements (RFI) inviting public comment (including anonymous submissions) by November 3, 2025 on the scope, prevalence, and effects of employer noncompetes, with questions ranging from impacts on worker mobility to hiring in medical professions. The RFI is designed to inform future enforcement and public advocacy.

As the RFI states, the FTC is primarily concerned with employers who insert noncompete clauses "into employment contracts without due consideration to whether the noncompete agreement is appropriate under the circumstances ..." Based on both the enforcement activity against Gateway and letters to healthcare employers, and the RFI, employers should anticipate continued FTC focus on lower-wage and healthcare roles, broadly scoped restrictions that are not tethered to protectable interests, and overuse of noncompetes where

narrower tools (e.g., trade-secret protections, tailored non-solicits) would suffice.

What's Happening in the States?

While employers should be aware of the FTC's interest in restricting and limiting noncompete agreements, they must also be mindful of the fact that such agreements are still primarily regulated by state law. This means employers should carefully review their noncompete and related employment agreements to ensure compliance with the laws of the states in which they do business, as states are taking different approaches to the issue. Recent updates to state law are shown in the chart below.

Approach to Noncompetes Recent State Examples Medical Professional Restrictions **Arkansas, Colorado, Indiana, Louisiana, Maryland, Montana, Oregon, Pennsylvania, Texas, and Utah** – each recently passed new restrictions or prohibitions on the use of noncompete agreements for medical professionals. Effective dates include **Jan. 1, 2025 (LA, PA)**; **May 7, 2025 (UT)**; **June 9, 2025 (OR)**; **July 1, 2025 (MD, IN)**; **Aug. 5, 2025 (AR)**; **Aug. 6, 2025 (CO)**; **Sept. 1, 2025 (TX)**; and **Jan. 1, 2026 (MT)**. Prohibitions on Use for Lower-Wage Employees **Virginia** – previously limited its ban to certain low-wage employees; **effective July 1, 2025**, Virginia expanded the ban to **all employees subject to overtime requirements**. Complete/Nearly Complete Ban **Wyoming** – enacted a law making **new noncompetes unenforceable as of July 1, 2025,** unless used to protect **trade secrets** or applied to **executives and management personnel** or their professional staff. Outlier – Enhancement of Noncompetes **Florida** – enacted the **CHOICE Act**, effective **July 3, 2025**, strengthening noncompete agreements, including **restricted periods up to four years** for some employees.

Practical Implications – What Employers Should Do Now

The FTC has shifted from an approach that emphasized broad rulemaking to targeted enforcement and fact-building via the RFI. Coupled with active state legislatures, the risk landscape now turns on specific contract terms, role-level justification, and state-by-state compliance. Employers that move quickly to narrow, document, or replace noncompetes – and that invest in trade-secret safeguards – will be best positioned for this next phase. Ensuring that investment is made wisely hinges on employers' appreciation of the necessity of:

- Engaging counsel to review every existing noncompete for state law compliance.
- Limiting noncompete clauses to roles where they're truly necessary.
- Avoiding using noncompetes for low-wage employees unless there's a strong, documented business justification.
- Avoiding using noncompete agreements if your firm is subject to state bans or thresholds (e.g., wage floors or categorical prohibitions).

Wiley has created a self-audit guide to aid employers who are working to understand the options and obligations concerning the continued use of noncompetes. Clients interested in receiving a copy of Wiley's self-audit guide may reach out to Olaoluwaposi O. Oshinowo.

[1] *Ryan LLC v. Federal Trade Commission*, No. 3:24-cv-00986-E (N.D Tex. Aug. 20, 2024).