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FTC Clarifies Enforcement Priorities and Philosophy on Worker Noncompetes

WRITTEN BY

Mariam Bicknell | Mark Payne

Since our September 9, 2025, analysis of the Federal Trade Commission's (FTC) view on enforcement of employee noncompetes, the FTC has articulated its intent to scrutinize overbroad noncompetes in the employment context on a case-by-case basis — targeting specific practices it views as anticompetitive.

On January 27, 2026, the FTC hosted a webinar titled "Moving Forward: Protecting Workers from Anticompetitive Noncompete Agreements." Kelse Moen, deputy director at the FTC's Bureau of Competition, stated in his opening remarks that the "Trump-Vance FTC is committed to protecting American workers from anticompetitive agreements that drive down wages, reduce job opportunities, and harm workers' bargaining power." In his remarks, FTC Chairman Andrew Ferguson stated that "many non-compete agreements likely violate our antitrust laws," that the FTC has the "power to prosecute anticompetitive non-compete agreements," and that the "traditional case-by-case enforcement approach will be effective in limiting unjustified, overbroad, unfair, or anticompetitive non-compete agreements." The chairman explained that when evaluating the reasonableness of noncompete agreements, the FTC should focus on whether the noncompete agreement: (1) advances "some procompetitive interest of the employer, thereby advancing the common good that competition is intended to serve"; and (2) "is narrowly tailored to achieve a procompetitive purpose sought by the employer."

For his part, FTC Commissioner Mark Meador stated that "non-competes when pursued for the wrong reasons and directed at the wrong workers, suppress wages and thereby make everything less affordable. Now, that's not to say there can never be a place for non-competes." In the commissioner's words, "employers pushing for non-competes should be able to explain why a non-compete is the only way to protect their interests." Meador outlined a nonexhaustive list of factors that should govern how the FTC evaluates noncompetes going forward.

First, the FTC should consider employee wage and skill level. Under this factor, noncompetes are less appropriate for workers who "lack extensive training, have limited access to non-public information, and are not performing specialized functions," because those noncompetes are "likely to harm worker mobility, keeping them from effectively competing for better wages and working conditions by taking their labor to different jobs." Conversely, noncompetes that are carefully tailored to business needs may be more appropriate where "workers are paid higher wages or where they have access to specialized training or information."

Second, noncompetes must be reasonable in both scope and duration. In Meador's view, noncompetes that run beyond one or two years, that exceed the geographic scope of the employer's operations or the employee's work area, or that impede an employee's ability to work in other lines of business are more likely to be anticompetitive.

Third, the FTC should consider the employer's market dominance. Larger companies with greater market power can expect higher compliance scrutiny in their use of noncompetes, because "if there are only a handful of buyers for an employer's labor, a non-compete has much more pronounced effect."

Finally, the FTC should look for evidence of the economic effects of the noncompete on an industry. The webinar included speakers from various industries, including health care, veterinary, and beauty, who shared their experiences with noncompetes and how those agreements negatively impacted their professions and livelihoods, using those negative impacts to explain the FTC's heightened focus on scrutinizing companies in industries most burdened by noncompete agreements.

Practical Takeaways for Employers

Although a nationwide ban on noncompetes is no longer proposed, the regulatory environment for noncompetes continues to grow more complex and risk-sensitive, given increasingly restrictive (and varying) state laws and the risk of FTC enforcement actions in cases it views as anticompetitive. To mitigate risk and align with the FTC's current approach, employers should consider taking the following actions:

- Consider whether alternatives to noncompetes exist that would protect the company's legitimate business interests. Such alternatives could include customer nonsolicitation provisions, and nondisclosure obligations, as well as effective information security practices — all of which permit greater worker mobility, while providing some protection of employer interests. Where less restrictive covenants are insufficient ,employers should assess and document the specific reasons why they are not sufficient.

- Narrowly tailor noncompetes to the company's legitimate business interests, and document and specify the business interests the noncompete is designed to protect (*e.g.*, trade secrets, goodwill, training investments, etc.)

- Limit the duration and geographic scope. The FTC has signaled that limiting the duration to one to two years and the geographic scope to the area where the employee actually performed services for the employer may be less susceptible to scrutiny.

- Limit noncompete agreements for low-wage or low-skilled workers.

- Employers in the health care, veterinary, and beauty industries may be at a heightened risk for FTC enforcement and should review and align their noncompetes with the FTC's updated approach.

- Consult with counsel to ensure noncompetes are compliant with applicable federal and state laws.

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