

FTC Refocuses Its Resources to Continue Its Work for Labor Market

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In what may be a surprise to those who thought that restrictions on the use of noncompetes would go away with the change in administration, this week, the Federal Trade Commission (FTC) announced that the agency will form a Joint Labor Task Force that will “prioritize rooting out and prosecuting deceptive, unfair, and anticompetitive labor-market practices that harm American workers.”^[1] FTC Chair Andrew Ferguson issued a memorandum reminding everyone that the FTC’s authority includes protecting American consumers in their role as workers.^[2]

The announcement follows a television interview where, after reiterating his prior objections to the FTC’s rule banning worker noncompetes, Ferguson explained his vision of the agency’s role regarding employees: “It is really important for the FTC ... to do everything it can to protect workers [O]ne of the most important things the FTC will do under my watch is focusing very intently on attacking anticompetitive conduct that hurts America’s workers. ... One of my top priorities is getting our super talented enforcers at the FTC out there looking for noncompete agreements, no poach agreements that violate the Sherman Act and making sure that the FTC is enforcing those laws.”

Ferguson’s memorandum directed the FTC’s Bureau of Competition, Bureau of Consumer Protection, Bureau of Economics, and Office of Policy Planning to focus all three arms of the agency on addressing “widespread” deceptive, unfair, and anticompetitive labor practices. His memorandum made clear that such labor practices depress workers’ earnings across every industry and are “often overlapping and mutually reinforcing” and that the FTC’s dual consumer-protection and competition mandate makes it uniquely suited to address these purported worker harms. Ferguson instructed the directors of all three bureaus to “break down siloes and bring the[ir] best experience, knowledge, and resources ... to bear on behalf of workers.”^[3]

The task force was directed to collaborate in the investigation of no-poach, nonsolicitation, and no-hire agreements; wage-fixing agreements; noncompete agreements; labor market monopolies; collusion or unlawful coordination on diversity, equity, and inclusion (DEI) metrics; unfair and deceptive conduct harming gig economy workers; misleading job advertising; deceptive business opportunities; misleading franchise offerings; harmful occupational licensing requirements; and job scams.^[4] To address these issues, the task force was instructed to:

- Prioritize investigation and prosecution of deceptive, unfair, or anticompetitive labor market practices;
- Harmonize their methods and procedures for uncovering and investigating deceptive, unfair, or anticompetitive

labor market conduct;

- Establish an information-sharing protocol across the bureaus to exchange best practices for identifying and investigating deceptive, unfair, or anticompetitive labor market conduct;
- Promote research on deceptive, unfair, or anticompetitive labor market practices and disseminate those findings throughout the agency and to the public;
- Identify opportunities to advocate for legislative or regulatory changes that would remove barriers to labor market participation, mobility, and competition;
- Engage in public outreach to workers regarding the law and encourage workers to report deceptive, unfair, or anticompetitive labor market conduct to the FTC; and
- Coordinate, to the fullest extent possible, all conduct investigations and enforcement actions.

The work of the task force is consistent with prior FTC efforts to protect workers, but the focus appears to have shifted away from the promulgation of rules. Instead, the chair has expressed a commitment to use the agency's resources for public and legislative advocacy as well as investigations and enforcement actions to protect workers.

Given this commitment, businesses should adhere carefully to existing state laws governing noncompete provisions and consider the following guidelines:

- Firms hiring from the same pool of workers are competitors regardless of their product or service offerings to consumers. This means that they must independently determine the terms of employment and compensation they will offer (*i.e.*, not engage in wage fixing or collusion);
- Companies should avoid the use of “no poach” covenants in contracts with suppliers and vendors which have the effect of limiting the mobility of workers;
- A “one size fits all” approach should not be used with restrictive covenant agreements. Instead, noncompete and nonsolicitation agreements should be used only with certain categories of workers and should be narrowly tailored to achieve the employer's goals using the least restrictive method available; and
- Procompetition objectives should be set forth in any written agreements and should include the benefits that flow to the employee.

[1] *Directive Regarding Labor Markets Task Force*, Chairman Andrew N. Ferguson, U.S. Fed. Trade Comm'n (Feb. 26, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/memorandum-chairman-ferguson-re-labor-task-force-2025-02-26.pdf.

[2] *FTC Launches Joint Labor Task Force to Protect American Workers*, U.S. Fed. Trade Comm'n (Feb. 26,

2025),

https://www.ftc.gov/news-events/news/press-releases/2025/02/ftc-launches-joint-labor-task-force-protect-american-workers?utm_source=govdelivery.

[3] *Directive Regarding Labor Markets Task Force*, https://www.ftc.gov/system/files/ftc_gov/pdf/memorandum-chairman-ferguson-re-labor-task-force-2025-02-26.pdf.

[4] *Id.*

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