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Labor Markets: FTC Takes Civil Action Against Vendor's Customer No-Hire Agreements

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The latest Federal Trade Commission (FTC) action in furtherance of its avowed commitment to "restore fairness to the American labor market" involves a no-poach investigation, not a noncompete case. Last week, the FTC announced that it and the New Jersey Attorney General's Office reached settlements with a building services company barring it from using no-hire agreements.

According to New Jersey's attorney general: "When employers enter into no-hire agreements, employees pay the price. They have fewer job opportunities, lower wages, and weaker benefits. That's why our office is committed to ending these unlawful labor practices across our state." The FTC expressed a similar sentiment: "American workers have a right to pursue job opportunities that offer them higher pay and better benefits. Yet anticompetitive no-hire agreements . . . prevent workers from realizing their full earning potential."

The FTC's complaint alleges that the no-hire provisions violate both Section 1 of the Sherman Act, which prohibits agreements that unreasonably restrain trade, and Section 5 of the FTC Act, which bars unfair methods of competition. The agency defines "no-hire agreements" as an agreement between the vendor and its customer that restricts, imposes conditions on, or otherwise limits the customer's or any other person's ability to solicit, recruit, or hire an employee, directly or indirectly, either during employment or for any period of time after, including by imposing fees.

The injury to competition alleged under Section 1 includes the elimination of direct, horizontal, and significant forms of competition to attract labor in the U.S. building services industry, thereby denying employees access to job opportunities, restricting their mobility, and depriving them of competitively significant information that they could have used to negotiate for better terms.

With respect to Section 5, the FTC claims that the no-hire agreements tend or are likely to harm competition, consumers, and employees in the building services industry. Restricting the ability of building owners and competing building service contractors to hire employees harms:

- Employees because it limits their ability to negotiate for higher wages, better benefits, and improved working conditions, and may lead to further hardship if the building where they work changes management, because the no-hire agreements force them to leave their jobs in some circumstances.
- Building owners and managers because they may be foreclosed from seeking or accepting bids from competitor vendors due to the prospect of losing long-serving workers with extensive, building-specific experience.

Based on published information, the vendor told FTC staff that it did not enforce the no-hire provisions. During the course of the investigation, begun in the prior administration, however, the FTC learned that there had been at least one attempt to enforce compliance. An FTC statement also notes that any legitimate objectives of no-hire agreements could have been achieved through significantly less restrictive means. The agency specified that, among other terms, the scope and duration of the restrictions were not reasonably necessary to achieve the purported procompetitive purpose.

Before the most recent government shutdown, the FTC made clear its intent to bring enforcement actions against conduct likely to harm labor markets, although the focus then appeared to be "unfair" employee noncompete agreements. In September, the FTC abandoned its defense of its 2024 rule banning virtually all worker noncompetes, entered into a settlement agreement with a pet cemetery operator prohibiting use of noncompete clauses in its employment agreements, and issued a Request for Information Regarding Employer Noncompete Agreements to enlist the public in identification of "specific employers continu[ing] to impose noncompete agreements," and announced that it would host a workshop regarding unfair noncompete agreements.

The FTC's noncompete workshop has been rescheduled for January 27, 2026, with an agenda for three panels: (1) Locked out of Work: Victims of Anticompetitive Noncompetes; (2) Unleashing the American Worker: Policy Perspectives on Noncompetes; and (3) Counting the Costs: The Economics of Noncompetes.

Key Takeaways

Although the public case materials provide limited information, there are some key takeaways from the latest FTC enforcement action:

- Make certain that any representations made to agency staff are accurate.
- The FTC intends to continue to police labor markets in terms of no-hire and noncompete agreements.
- Restrictions on worker movement should be framed as narrowly as possible to accomplish a specific and demonstrable procompetitive goal.
- "Penalties" or fees designed to prevent worker departures or improved bargaining positions should be avoided. The more significant the fee, the greater the antitrust risk.
- Restraints that go beyond the employees staffed on the specific project that is the subject of the contract are riskier.
- Noncompete and no-hire provisions are riskier when the impacted employees are low-skilled workers, largely because it can be difficult to justify the restrictions.
- Even restraints that exceed the term of employment by only six months may be excessive, particularly if low-skilled workers are affected.
- Worker restrictions should not be designed to prevent competition in market for the employer's products or services.

Our Antitrust and Labor & Employment teams are closely monitoring these developments and are available to assist clients in assessing potential risks and opportunities arising from related matters.

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