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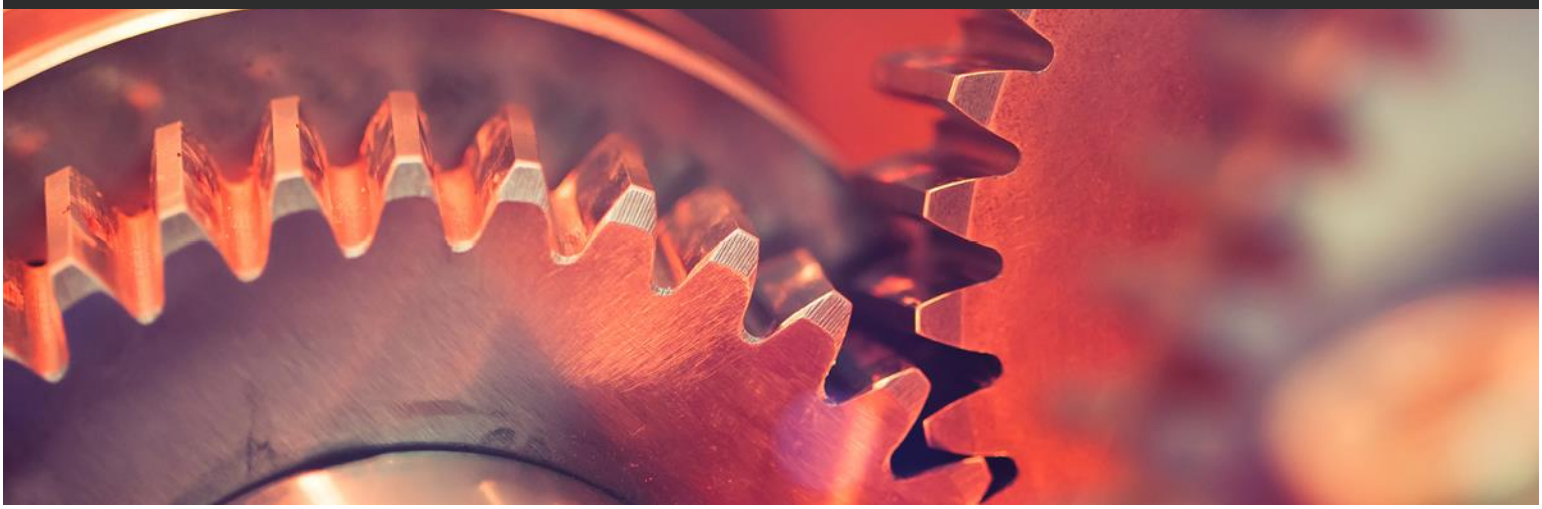

September 2025

FTC Completes Strategy Pivot: Drops Nationwide Noncompete Ban, Targets Individual Cases

In a one-two punch, the United States Federal Trade Commission (FTC) announced two significant developments relating to regulating employee noncompete agreements on consecutive days. First, the FTC announced a settlement agreement with a pet cremation business, Gateway Services, Inc., to stop enforcement of the company's noncompetes and also initiated a request for public comments on noncompete abuses. The next day, the FTC formally abandoned its appeals in two United States Courts of Appeals[1] of injunctions against enforcement of a 2024 rule that effectively banned and/or voided all employee noncompetes nationwide. Additionally, the next week the FTC announced it would issue letters to unidentified healthcare employers and staffing companies, encouraging them to revisit any unduly broad noncompete provisions.

In short, the current FTC has abandoned the prior administration's complete prohibition on employee noncompetes while maintaining a willingness to prosecute individual abuses under the auspices of antitrust enforcement.

Background on Noncompetes and Adoption of the Noncompete Clause Rule

For background, noncompetes within the context of this GT Alert generally refer to employment contract provisions that restrict an employee from working in competition with its employer for a certain period of

[1] *FTC v. Ryan*, No. 24-10951 (5th Cir.); *FTC v. Props. of the Villages, Inc.*, No. 24-13102 (11th Cir.).

time once their employment has ended. Generally, noncompetes contain three components: (i) a definition of what scope-of-work or specific competitor is covered; (ii) a geographic limitation regarding where the employee cannot compete; and (iii) a time limitation regarding how long the noncompete remains in effect.

Traditionally, the enforceability of a noncompete was purely a question of state contract and/or employment law, but there has been scrutiny of these agreements under federal and state antitrust laws. For example, in 2022, the State of Oregon passed laws that not barred noncompetes, but required them to be deleted from employee's contracts. Similarly, the Minnesota legislature passed statutes barring the enforcement of any noncompetes entered after July 1, 2023. Even as recently as June 9, 2025, the New York State Senate passed a bill to ban all noncompetes for employees making less than $500,000 per year. That bill would require approval of the State Assembly and Governor to become law.

In July 2021, former President Joe Biden issued an executive order directing, among other things, that the FTC consider promulgating formal rules to either ban or limit employee noncompetes nationwide. Eighteen months later, the FTC announced a proposed administrative rule which, after public comment and analysis, was approved by the FTC on April 23, 2024.

Under this "Non[c]ompete Clause Rule," the vast majority of post-employment noncompetes were prohibited as anticompetitive and had to be affirmatively deleted from employee contracts. The rule also applied to contracts with independent contractors, but had various exceptions, including (i) sale-of-business where a principal who sold his entire business may be bound by an agreement not to compete with the purchaser and (ii) nondisclosure agreements on non-solicitation agreements, so long as they did not "function" as noncompetes. This rule was codified in 89 Fed. Reg. 38,342 and was set to take effect on Sept. 4, 2024.

Two Federal District Courts Block Noncompete Clause Rule; FTC Abandons Appeals

Just before the Noncompete Clause Rule was to take effect, a federal district court in Texas and another in Florida issued nearly simultaneous rulings that enjoined the FTC from enforcing its rule because it exceeded the scope of the rulemaking authority relied on by the FTC. The FTC immediately appealed those rulings to the Fifth and Eleventh Circuit Courts of Appeals. However, on April 7, 2025—i.e., approximately six weeks after President Donald Trump's second term began—the FTC filed simultaneous notices in both federal appellate courts to request that the courts abate both appeals for 120 days to give the new administration an opportunity to review and decide whether to maintain the appeals.

On Sept. 5, the FTC voted 3-1 to dismiss both appeals and accede to the district courts' orders vacating the Noncompete Clause Rule. Chairman Andrew N. Ferguson—who had criticized the rule when issued under the prior administration—published a statement on the matter, which Commissioner Melissa Holyoak joined. According to Chairman Ferguson, the "Rule's illegality was patently obvious" and "would never survive judicial review" because it "reimagine[ed] a single clause tucked away in an ancillary provision of a century-old statute. However, the Chairman acknowledged that "noncompete agreements can be pernicious" and the FTC has the statutory "authority to step in when they are onerous enough to become unlawful." After criticizing the "Biden Commission" for issuing a blanket rule rather than prosecuting a significant number of individual cases, the Chairman stated that the "Trump-Vance Commission" would "get down to the hard business of promoting labor competition and protecting American workers" by abandoning an indefensible rule and focusing on individual enforcement.

Commissioner Mark R. Meador wrote a separate concurrence, noting that a "balanced enforcement approach" was appropriate because although noncompetes have become pervasive, they "can protect

legitimate investments in training, encourage internal collaboration, and safeguard propriety and confidential information."

Commissioner Rebecca Kelly Slaughter—the sole dissenter—issued her own statement in which she emphasized that the FTC "received 26,000 comments on the rulemaking to ban noncompetes . . . 25,000 of those comments supported a categorical ban." Commissioner Slaughter noted that the Noncompete Clause Rule was challenged in multiple cases and "different courts came to different conclusions, but the FTC was still fighting to protect workers." She therefore disagreed with the Commission's decision to abandon its defense of the "duly promulgated rule."

FTC Settles with Gateway Services, Asks Public to Report Noncompete Abuses, and Warns Healthcare Employers

Just a day earlier, on Sept. 4, the FTC took action pursuing its case-by-case approach by announcing a settlement with Gateway Services, Inc., the nation's largest pet cremation business. Under the settlement, Gateway agreed to stop enforcing its noncompete agreements that applied to nearly all its 1,800 workers. According to the FTC, in "2019, Gateway adopted is noncompete policy for all newly hired employees, regardless of their position or responsibilities." Under the settlement, Gateway is (i) prohibited from entering into or enforcing noncompetes (with limited exceptions); (ii) required to notify employees that they are not subject to noncompetes; and (iii) prohibited from barring solicitation of current/prospective customers unless the former employee worked directly with the customer in the last 12 months of employment.

Contemporaneously with that announcement, the FTC also issued a "Request for Information on Employee Noncompete Agreements." This request was part of a "public inquiry to better understand the scope, prevalence, and effects of employer noncompete agreements, as well as to gather information to inform possible future enforcement actions." According to the announcement, employees have 60 days in which to submit such comments, after which they will be posted on the government website. It was not clear whether this public inquiry and publication procedure will include a re-review of the nearly two years' worth of submissions and comments made leading up to the adoption of the Noncompete Clause Rule.

Then the next week, on Sept. 10, 2025, the FTC announced it would issue a template letter to certain unidentified healthcare employers and staffing companies, warning them about potential overuse of noncompetes. The letter stated that the FTC has information that nurses, physicians, and other medical professionals may be subject to unreasonable noncompetes. While the FTC acknowledged that noncompetes can be valid in certain circumstances, it suggested employers need to consider whether they are necessary and whether less restrictive terms would be appropriate. Indeed, the FTC suggested that noncompetes may be "inappropriate for certain roles entirely." The FTC stated it is focusing its resources on overly broad use of noncompetes as unfair methods of competition under Section 5 of the FTC Act and encouraged companies with unlawful provisions to discontinue their use and notify employees.

As illustrated by this series of actions, the current FTC has made clear that it will no longer treat employee noncompetes as categorically anticompetitive, but instead will review and decide whether to challenge them on a case-by-case basis. Employers and their attorneys may benefit from observing future enforcement actions to determine what types of businesses, industries, and noncompete clauses might be subject to scrutiny and revisiting their own provisions as appropriate. This includes the FTC's recent issuance of warning letters to health care employers and staffing agencies urging them to ensure that their contracts, and any restrictive covenants in them, comply with the law.

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