MASSACHUSETTS Lawyers Weekly

Part of the BRIDGETOWER MEDIA network ■ DECEMBER 1, 2025

VIEWPOINT

Has the federal government abandoned regulation of noncompete agreements?

■ TERENCE P. MCCOURT

Terence P. McCourt

On April 23, 2024, the U.S. Federal Trade Commission approved a proposed final rule to ban non-competition agreements for most employees in the United States.

The rule defines a prohibited noncompete clause as any "term or condition of employment that prohibits a worker from, penalizes a worker for, or functions to prevent a worker from: (i) Seeking or accepting work in the United States with a different person where such work would begin after the conclusion of the employment," or (ii) "Operating a business in the United States after the conclusion of the employment."

The rule was premised on the FTC's view that non-competition clauses suppress wages and unfairly limit competition in violation of the Federal Trade Commission Act.

The FTC's rule would preempt any conflicting state laws. Existing noncompete agreements would become unenforceable, and employers would be required to provide notice to both current and former workers that their noncompete clauses are no longer valid.

The rule would have had a major impact on the workforce, as the FTC estimated that one in five American workers, or approximately 30 million individuals, were subject to noncompete agreements.

Upon issuance of the rule, FTC Commissioner Andrew Ferguson, joined by Commissioner Melissa Holyoak, issued a dissenting statement characterizing the rule as "unlawful," making the case that Congress had not authorized the FTC to issue the rule and that its promulgation would violate the Administrative Procedure Act.

NONCOMPETE RULE ENJOINED

The rule was scheduled to go into effect on Aug. 22, 2024, but on Aug. 20, in the case of *Ryan, LLC v. Federal Trade Commission*, the U.S. District Court for the Northern District of Texas issued a nationwide injunction blocking implementation of the rule.

The court concluded that "the Rule is arbitrary and capricious because it is unreasonably overbroad without a reasonable explanation. The Rule imposes a one-size-fits-all approach with no end date, which fails to establish a rational connection between the facts found and the choice made."

It now appears that, for the foreseeable future, regulation of noncompete agreements will revert to the status quo ante: a patchwork of statutes, regulations and caselaw that differ from state to state. However, the FTC has not completely ceased federal involvement.

The FTC appealed the *Ryan* decision to the 5th U.S. Circuit Court of Appeals, and it appealed a similar ruling from the Florida federal District Court to the 11th Circuit.

FTC WITHDRAWS APPEALS

On Sept. 5, 2025, the FTC voted to dismiss both of the pending appeals and to accede to the vacatur of the rule by the lower courts. Significantly, Commissioner Ferguson was FTC chairman at that time. In a statement confirming the withdrawal of the appeals, Chairman Ferguson stated that the "Rule's illegality was patently obvious and would not survive judicial review."

CURRENT STATE OF THE LAW

It now appears that, for the foreseeable future, regulation of noncompete agreements will revert to the status quo ante: a patchwork of statutes, regulations and caselaw that differ from state to state.

However, the FTC has not completely ceased federal involvement.

While renouncing the broad-brush approach represented by the rule, the FTC has signaled a more targeted strategy. In Chairman Ferguson's Sept. 5 statement announcing the withdrawal of the appeals, he stated that the FTC "will continue to enforce the antitrust laws aggressively against noncompete agreements."

Ferguson warned that "in the coming days, firms in industries plagued by thickets of noncompete agreements will receive warning letters from me, urging them to consider abandoning those agreements as the Commission prepares investigations and enforcement actions."

Indeed, on Sept. 10, the FTC sent letters to several large health care employers and staffing firms urging them to conduct a comprehensive review of their noncompete agreements, referencing the FTC's authority "to investigate unfair methods of competition, including noncompete agreements that are unjustified, overbroad, or otherwise unfair or anticompetitive."

IMPLICATIONS

These developments confirm that, in addition to the maze of state law restrictions, the FTC is taking a case-by-case approach to evaluating noncompete restrictions, increasing legal risks for employers that use such agreements without a legitimate business justification.

Employers should consider a review of their restrictive covenant agreements to ensure that the agreements are carefully crafted, in accordance with applicable law, and consistent with the employee's role and responsibilities within the organization.

Terence P. McCourt is co-managing shareholder of the Boston office of Greenberg Traurig, where he chairs the labor and employment practice. For more information, please contact the author at mccourtt@gtlaw.com.