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FTC Walks Away from Rulemaking—But Not the Fight on Non-Competes

By Kristin Sanford, John Barry, Celine Chan, Geneva Torsilieri Hardesty, Caren Andrango Espin and Mia Smutny

What Happened

On September 5, 2025, the Federal Trade Commission ("FTC" or "the Commission") cemented a shift in strategy to enforce the antitrust laws against non-compete agreements. Following a 3-1 vote by the FTC Commissioners, the Commission filed to accede to the vacatur of its Non-Compete Clause Rule (the "Rule"), withdrawing its notice to appeal in *Ryan, LLC v. FTC*, No. 24-10951 (5th Cir.), and *Properties of the Villages, Inc. v. FTC*, No. 24-13102 (11th Cir.). The Rule, enacted under then-FTC Chair Lina Khan and discussed in several of our earlier alerts, banned nearly all non-compete agreements between employers and workers.

In a statement joined by Commissioner Holyoak, Chairman Ferguson explained that the decision to abandon the Rule was based on its "patently obvious" illegality, asserting that the FTC did not have the authority to promulgate the Rule. Chairman Ferguson criticized the Rule for purporting to "preempt the laws of all fifty States" and "render categorically unlawful a species of contract that has been lawful since the eighteenth century." Importantly, however, Chairman Ferguson emphasized that the FTC remains committed to promoting labor competition through targeted, case-by-case enforcement under Section 5 of the FTC Act. Commissioner Meador issued a concurring statement noting that the Rule was overbroad and arguing that the "opposing economic considerations" involved in non-compete agreements require "a more balanced enforcement approach than that contemplated by the [Rule]."

Commissioner Slaughter issued a dissenting statement, highlighting potential negative effects of non-compete agreements, including barriers to worker mobility, wage suppression, prevention of new business formation, and slower innovation. She also argued that, if the FTC wishes to unwind the Rule, it must follow the legal process of notice and comment established by the Administrative Procedure Act ("APA") rather than "simply withdrawing from litigations."

How We Got Here

During the Biden Administration, the FTC issued a Notice of Proposed Rulemaking for the Non-Compete Clause Rule on January 5, 2023, and, following a lengthy notice-and-comment period, promulgated a final Rule on April 23, 2024. The Rule applied both prospectively and retrospectively to prohibit most employers from enforcing, entering into, or attempting to enter into non-compete clauses with workers. The Rule also purportedly preempted all state laws related to non-competes except for laws more restrictive than the Rule, which was particularly notable given that many states have their own non-compete regulatory frameworks and have taken an increased interest in non-compete legislation and enforcement in recent years.

The Rule was highly controversial and originally passed the FTC with a 3-2 vote along party lines. Although scheduled to take effect in September 2024, the Rule was stayed by multiple pending litigations. First, in *Ryan, LLC v. FTC*, the U.S. District Court for the Eastern District of Texas issued a preliminary injunction on July 3, 2024, preventing enforcement of the Rule against the specific plaintiffs and plaintiff-intervenors in the case. The Middle District of Florida came to the same conclusion for the plaintiffs in *Properties of the Villages, Inc. v. FTC*. The *Ryan* Court later extended its ruling on August 20, 2024, setting aside the Rule nationwide and holding that the Rule violates the APA because: (1) the FTC lacks the statutory authority to promulgate the Rule; and (2) the Rule is arbitrary and capricious. The FTC initially filed appeals in both cases, which it pursued until this month, when, under new leadership, the FTC voluntarily dismissed its appeals, effectively acceding to the vacatur of the Rule.

What Does This Mean for the Future of Non-Competes?

While the federal nationwide ban on non-compete agreements is gone, federal enforcement risk remains. Indeed, the FTC has taken several recent actions indicating its continued focus on non-compete agreements, and labor issues more broadly.

Early in his tenure as Chair of the Commission, Chairman Ferguson directed the FTC to launch a Joint Labor Task Force designed to prioritize "rooting out and prosecuting deceptive, unfair, and anticompetitive labor-market practices." More recently, the FTC issued a Request for Information to "better understand the scope, prevalence, and effects of employer noncompete agreements, as well as to gather information to inform possible future enforcement actions."

Even in his statement acceding to the Non-Compete Clause Rule's vacatur, Chairman Ferguson discussed the potential harms of non-compete agreements, stating that they can be "pernicious" and "abused to the effect of severely inhibiting workers' ability to make a living." He also emphasized the FTC's authority through the FTC Act and the Sherman Act to "step in when [non-compete agreements] are onerous enough to become unlawful" and criticized the Commission's actions under the Biden Administration, arguing that it "could have brought cases that would have protected American workers from the effects of their unlawful noncompete agreements." Chairman Ferguson further pledged to "continue to enforce the antitrust laws aggressively against noncompete agreements" and warned that "firms in industries plagued by thickets of noncompete agreements will receive warning letters from [him], urging them to consider abandoning those agreements as the Commission prepares investigations and enforcement actions."

Commissioner Meador likewise appears supportive of further actions against non-compete agreements, noting that non-compete agreements "can create barriers to entry, restrict worker mobility, and suppress wages in ways that harm competition and workers." However, Commissioner Meador also highlighted the pro-competitive benefits of non-compete agreements, such as protecting investments in training, encouraging internal collaboration, and safeguarding confidential information. As a result, Commissioner Meador proposed an analytical framework for the FTC to use when evaluating non-compete agreements that balances the pro-competitive benefits and adverse effects associated with such restrictions.

Consistent with these positions, the FTC sent letters on September 10, 2025 to several large healthcare employers and staffing firms urging them to ensure that their employment agreements are appropriately tailored and comply with the law. The FTC expressed concern that non-compete agreements in the healthcare industry "unreasonably limit employment options for vital roles like nurses, physicians, and other medical professionals," particularly in rural areas. In the letters, Chairman Ferguson "strongly encourage[d]" companies to immediately discontinue using non-compete agreements that are unfair or anticompetitive. Specifically, he warned against non-compete agreements imposed "without due consideration to whether they are necessary and appropriate under the circumstances, including whether less restrictive alternative contract terms may sufficiently achieve the same procompetitive purposes," and clarified that such agreements may be "overbroad in duration or geographic scope" or "inappropriate for certain roles entirely."

In addition, the FTC recently took action against Gateway Services, Inc., the nation's largest pet cremation business, accusing Gateway of using broad non-compete agreements that stifled job mobility and suppressed competition in the pet cremation industry. The FTC alleged that Gateway "imposed noncompete agreements on almost all of its employees," regardless of their position or responsibilities. The agreements prohibited employees from working in the pet cremation service industry anywhere in the U.S. for one year after leaving the company. Moreover, Gateway's policy imposed non-compete agreements even in situations involving facility closures or post-acquisition layoffs, and in some cases was viewed as a competitive tool to suppress rival entry into local markets.

The proposed consent order would require Gateway to immediately stop enforcing all existing non-compete agreements, prohibit Gateway from entering such agreements in the future (with limited exceptions), and require Gateway to notify employees that they are no longer subject to non-compete agreements. The consent order would also prohibit Gateway from enforcing non-solicitation agreements, with some exceptions.

Concluding Thoughts

Based on recent actions, the Commission continues to focus on anticompetitive labor practices, albeit with a more tailored approach compared to the prior administration. Non-compete agreements and other restrictive employment covenants are likely to remain a focus for the FTC despite abandoning the nationwide ban. In addition, employers remain subject to the patchwork of state non-compete regulations. Thus, it continues to be critical to ensure that labor practices and policies conform with federal and state regulatory frameworks.

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If you have questions concerning the contents of this alert, or would like more information, please speak to your regular contact at Weil or to any of the following:

Authors

Kristin Sanford (DC)	View Bio	kristin.sanford@weil.com	+1 202 682 7115
John Barry (NY)	View Bio	john.barry@weil.com	+1 212 310 8150
Celine Chan (NY)	View Bio	celine.chan@weil.com	+1 212 310 8045
Geneva Torsilieri Hardesty (DC)	View Bio	geneva.hardesty@weil.com	+1 202 682 7129
Caren Andrango Espin (DC)	View Bio	caren.andrangoespin@weil.com	+1 202 682 7206
Mia Smutny (DC)	View Bio	mia.smutny@weil.com	+1 202 682 7187

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