

## ANTITRUST TRADE &amp; PRACTICE

# FTC Abandons Non-Compete Rule: Implications for the Future of Non-Competes and Their Enforceability

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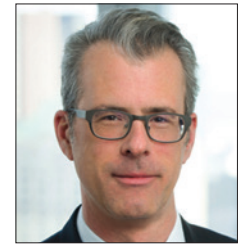
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Under the Biden Administration, the Federal Trade Commission (the FTC) sought to protect labor by outlawing non-compete agreements (non-competes) across the United States. Starting in January 2023, the Biden FTC began working on a proposed rule to do exactly that, and in May 2024, the final rule was published banning non-competes nationwide (the Rule). (Madison N. Whiting, *The Federal Trade Commission, Germany, and Non-Compete Agreements: An Analysis of the Federal Trade Commission's Proposed Ban on Non-Compete Agreements and a Comparison to German Non-Compete Law*, 21S.C. J. Int'l L. & Bus. 290, 294 (2025).

Ryan, a Dallas-based tax accounting firm, together with the Chamber of Commerce, Business Round table, Texas Association of Business, and Long view Chamber of



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Commerce challenged the Rule in federal court. Judge Ada Brown of the Northern District of Texas ruled the Rule unconstitutional in *Ryan, LLC v. FTC* and blocked it from taking effect. (739 F. Supp. 3d 496 (N.D. Tex. July 2024)). The Biden FTC subsequently appealed the decision on Oct. 18, 2024, though given the Trump Administration's organizational changes to the FTC, it was widely expected that the appeal would be dropped. That finally occurred on Sept. 4, 2025, when the new FTC leadership withdrew its appeal, Resulting in the vacatur of the non-compete rule. (*Statement of Chairman Andrew N. Ferguson Joined by*

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*Commissioner Melissa Hoyak Regarding Ryan, LLC v. FTC*, FTC (2025).

### **Overview of Non-Compete Rule**

The Biden FTC's rule sought to ban both future and pre-existing non-compete clauses in employment contracts. Non-compete agreements work by prohibiting an employee from competing with their employer in the future by preventing an employee from either starting their own competing business or being employed by a competing business in the

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same geographic area. (Whiting, *The Federal Trade Commission, Germany, and Non-Compete Agreements: An Analysis of the Federal Trade Commission's Proposed Ban on Non-Compete Agreements and a Comparison to German Non-Compete Law*).

The Biden FTC asserted that the FTC had the statutory authority to promulgate the Rule under Sections 5 and 6(g) of the FTC Act. They claimed that non-compete agreements are unfair methods of competition, in violation of Section 5 of the FTC Act, because they negatively influence competitive conditions in labor, product, and services markets. The Biden FTC further argued that Section 5 of the FTC Act demonstrates clear congressional intent that the FTC regulate unfair methods of competition, which the Biden FTC asserted should include non-compete agreements.

The Biden FTC found support for the Rule when it analyzed non-competes and their effect on market forces. It claimed that non-competes limit the ability of workers to seek more favorable jobs, which suppresses competitive factors such as wage growth and product quality. Additionally, the Biden FTC argued that because one-fifth (1/5) of American workers were subject to non-competes, the sheer volume of Americans impacted by non-competes gave the FTC statutory authority to promulgate the Rule.

The ban had a number of detailed exceptions. The first exception applied when a business entity is sold and the buyer of that business restricts the seller from competing with the business they just sold. Another exception allowed existing causes of action, such as the breach of a non-compete agreement, to continue if it was brought prior to the ban going into effect.

### **FTC's Sept. 4, 2025 Decision to Abandon the Rule**

The Trump FTC's decision to abandon the Rule was largely guided by its determination that the Rule is illegal and indefensible in court. It should come as no surprise that the FTC revoked the Rule, as two of the three Commissioners at the time of the rule's revocation, current FTC Chairman Andrew N. Ferguson and former member Melissa Holyoak, dissented from the decision to publish the Rule in 2024. Mark Meador, who was appointed by President Donald Trump in April 2025, also voted in support of the revocation of the rule. Only Commissioner Rebecca Slaughter, a Biden-appointee, voted against revocation.

Ferguson's dissent in 2024 centered on his belief that the FTC lacked the authority to issue the Rule. (See *Dissenting Statement of Commissioner Andrew N. Ferguson, In the Matter of the Non-Compete Clause Rule*, FTC (2024). Specifically, Ferguson argued that Section 6(g) of the FTC Act only grants the FTC authority to make rules governing its internal affairs, rather than private conduct. He also argued that Section 5 of the FTC Act did not support the FTC's authority to issue this Rule

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because under the political questions doctrine, administrative agencies can only promulgate rules of great significance if Congress "has clearly and unambiguously granted them the authority to do so." Ferguson explained that the language in Section 5 of the FTC Act did not provide such clear and unambiguous authority to undertake the substantive rulemaking of banning non-competes.

Ferguson issued a statement accompanying the FTC's decision to withdraw its appeal in *Ryan, LLC v. FTC*. (*Statement of Chairman Andrew N. Ferguson Joined by Commissioner Melissa Hoyak Regarding Ryan, LLC v. FTC*, FTC (2025). In this statement, Chairman Ferguson explained that the FTC should prioritize spending its resources elsewhere, and any such action against non-competes can be determined on a case-by-case basis. To further this goal, he invited the public to

provide the FTC with information to help them better understand the scope and effects of non-compete agreements.

### **Enforcement During and After Rescindment**

Though the Rule never took effect, the FTC has always had the authority to evaluate non-compete agreements on a case-by-case basis. In terms of enforcement actions, the FTC only filed one lawsuit to directly challenge non-compete agreements prior to Dec. 19, 2025. This lawsuit was filed against Gateway Services for binding all of its employees to a non-compete agreement. The FTC filed suit against the Ontario corporation and its U.S. subsidiary to invalidate the non-compete agreement of nearly 1,800 employees as a violation of Section 5 of the FTC Act. (*FTC Takes Action to Protect Workers from Non-compete Agreements*, FTC (2025).

According to the FTC, the non-compete agreements covered everyone who worked at Gateway Services, a pet aftercare provider, and prevented employees from working in the pet cremation business for a year after leaving their employment with Gateway Services. The FTC alleged that Gateway Services was using non-compete agreements to suppress competition in the market and as a response to threats of competition for employees from other firms in the market. According to the FTC, these non-competes had the likely effect of suppressing competition in the pet cremation business. (Complaint, *In Re Gateway Services, Inc.* [presentation="role" href="https://www.ftc.gov/system/files/ftc\\_gov/pdf/Gateway-Complaint.pdf" target="\\_blank" link-data="{"cms.site.owner":{"\\_ref":"0000018e-8611-dbad-a9af-](https://www.ftc.gov/system/files/ftc_gov/pdf/Gateway-Complaint.pdf)

fe79f4ec0000", "\_type": "ae3387cc-b875-31b7-b82d-63fd8d758c20"}, "cms.content.publishDate": "1769379411226", "cms.content.publishUser": {"\_ref": "00000193-034e-d4f5-af9f-8b4eb8a20000", "\_type": "6aa69ae1-35be-30dc-87e9-410da9e1cdcc"}, "cms.content.updateDate": "1769379411226", "cms.content.updateUser": {"\_ref": "00000193-034e-d4f5-af9f-8b4eb8a20000", "\_type": "6aa69ae1-35be-30dc-87e9-410da9e1cdcc"}, "link": {"attributes": [], "target": "NEW", "url": "https://www.ftc.gov/system/files/ftc\_gov/pdf/Gateway-Complaint.pdf", "\_id": "0000019b-f73b-dacb-a1bb-f7ff2a5f0000", "\_type": "33ac701a-72c1-316a-a3a5-13918cf384df"}, "theme.bundle-default.:link:LinkEnhancement.hbs.\_template": null, "theme.bundle-default.:link:LinkEnhancement.hbs.\_preset": null, "\_id": "0000019b-f73b-dacb-a1bb-f7ff2a5f0001", "\_type": "02ec1f82-5e56-3b8c-af6e-6fc7c8772266"}>*In Re Gateway Services, Inc.*. Gateway subsequently settled with the FTC, committing not to enter into or maintain certain non-compete agreements. (*In the Matter of Gateway Servs. Inc.*, [Decision and Order](#), FTC.

In a similar action, the FTC targeted a set of no-hire agreements by Adamas Amenity Services LLC which restricted their primarily low-wage workers from being hired by clients. While no-hire agreements are different than non-compete agreements, the FTC used similar arguments to their complaint in Gateway Services, claiming that the agreements suppressed marketplace competition and prevented employees from receiving higher wages and better benefits. (*FTC Continues Enforcement Action Streak Against Anticompetitive No-Hire Agreements*,

FTC (2025)). Ultimately, the FTC's enforcement action against no-hire agreements in the Adamas case shows a continued interest in directly challenging anti-competitive labor practices in a post-non-compete rule world.

The FTC also addressed non-compete agreements in the context of other actions. For example, under the Biden administration in October 2024, the FTC found that coffee shop franchise Qargo Coffee failed to disclose information that is required by the FTC before prospective franchisees sign a franchise agreement, known as the Franchise Rule. Within the FTC's proposed order, Qargo would be prohibited from enforcing or threatening to enforce any non-compete agreements against its franchisees or licensees. (*FTC Takes Action Against Qargo Coffee for Franchise Rule Violations*, FTC (2024)).

Additionally, in August 2024, the FTC, Department of Justice (DOJ) Antitrust Division, Department of Labor (DOL), and the National Labor Relations Board (NLRB) signed an agreement which was intended to support the FTC and DOJ's ability to review a merger's impact on the labor market. Under the agreement, the DOL and NLRB would meet with the DOJ and the FTC, upon their request, to provide assistance and data when reviewing mergers. The DOL agreed to train some of its employees on antitrust issues, while the NLRB agreed to train personnel from the FTC and the DOJ on labor issues. (*FTC, DOJ Partner with Labor Agencies to Enhance Antitrust Review of Labor Issues in Merger Investigations*, FTC (2024)).

The FTC has also remained active in supporting state legislation that would ban

or limit the use of non-competes in certain sectors since the Rule was formulated in 2024. Specifically, the FTC wrote a letter to two Ohio Senators, regarding proposed legislation SB 126, which would have limited the use of non-compete agreements for certain health care professionals at non-profit hospitals. (*Advocacy Letter to Ohio Legislature Re: S.B. 126*, FTC OFF. OF POL'Y PLAN. The letter fell short of outright encouraging the two senators to vote in favor of SB 126, but provided a host of data in support of the legislation. The bill was referred to committee, but never made it out of committee for a floor vote in the Ohio Senate. (Senate Bill 126 Status, [The Ohio Legislature](#)).

Furthermore, during the early days of the Trump Administration, Ferguson launched a Joint Labor Task Force with the goal of protecting American workers from unfair and deceptive labor-market practices. The Joint Task Force included members from the FTC's Bureau of Competition, Bureau of Consumer Protection, Bureau of Economics, and Office of Policy Planning. Within the directive, Chairman Ferguson noted non-compete agreements as one of the potentially harmful labor practices that the Joint Task Force should evaluate. (*FTC Launches Joint Labor Task Force to Protect American Workers*, FTC (2025)).

### **Implications of the FTC's Decision**

The FTC's decision to abandon the Rule does not mean non-compete agreements

will escape scrutiny under the Trump Administration. Five days following the FTC's rescission of the ban, Chairman Ferguson sent letters to several large employers and staffing firms in the healthcare industry, urging a review of their employment agreements, non-compete agreements, and other employee restriction agreements. The FTC likewise noted in its press release that the healthcare industry has a number of unreasonable non-compete and restrictive agreements for nurses, physicians, and other professionals. (FTC Chairman Ferguson Issues Noncompete Warning Letters to Healthcare Employers and Staffing Companies, FTC (2025)). The FTC reasoned that non-compete agreements in healthcare restrict a patient's choice of who provides their medical care, especially in rural areas. (*Noncompete Warning Letter Template*, FTC).

Although the letters did not identify illegal conduct, they demonstrate the FTC's willingness to look for broad industry-wide issues in non-compete agreements. As Trump's FTC paves its own path to combat non-competes, companies should carefully analyze their own non-compete agreements in order to minimize future administrative scrutiny.

*The opinions expressed in this article are those of the authors and do not necessarily reflect the views of Skadden or its clients*