

LEGAL UPDATES

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## Services

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## Professionals

BARBARA A. GRANDJEAN  
DENVER:

303.892.4458

BARBARA.GRANDJEAN@  
HUSCHBLACKWELL.COM

WENDY K. ARENDS  
MADISON:

608.258.7382

WENDY.ARENDS@  
HUSCHBLACKWELL.COM

COURTNEY STEELMAN  
KANSAS CITY:  
816.983.8000  
COURTNEY.STEELMAN@  
HUSCHBLACKWELL.COM

CHENGZHUO HE  
KANSAS CITY:  
816.983.8364  
CHENGZHUO.HE@  
HUSCHBLACKWELL.COM

# FTC Abandons 2024 Non-Compete Rule, Signals Priority in Non-Compete Enforcement Actions

## Summary

On September 5, 2025, the Federal Trade Commission (FTC) took steps to formally end its efforts to implement a nationwide ban on non-compete agreements, agreeing to vacate the Non-Compete Clause Rule and dismiss all pending appeals. However, the FTC has signaled its continued focus on unlawful post-employment non-compete agreements through case-by-case enforcement under Section 5 of the FTC Act, and states continue to propose and enact non-compete bans of varying degrees.

## Background

The FTC's Non-Compete Clause Rule, issued in April 2024, would have barred most post-employment non-compete agreements nationwide, and it was immediately challenged in federal court. In August 2024, a district court enjoined enforcement, and subsequent appellate litigation followed. The change in the federal executive branch administration and continued judicial action led the FTC to abandon its appeals, effectively vacating the rule.

## Key developments

**Litigation concludes:** The FTC has withdrawn its appeals in both *Ryan, LLC v. FTC* (5th Cir.) and *Properties of the Villages v. FTC* (11th Cir.) and has agreed to vacate the rule.

**State law controls:** The regulatory landscape returns to the pre-rule status quo, with state law governing the enforceability of non-competes; dozens of

states continue to enact and enforce stringent statutes prohibiting non-competes.

**FTC's enforcement actions:** The FTC will continue its enforcement efforts aggressively against the unfair use of post-employment non-competes on a case-by-case basis under Section 5 of the FTC Act.

**FTC's public inquiry program:** The FTC has launched a public inquiry program “to better understand the scope, prevalence, and effects of employer noncompete agreements, as well as to gather information to inform possible future enforcement actions.”

## **Practical implications for employers**

### ***Non-competes remain, states continue to enact non-compete laws***

As noted above, although the FTC's Non-Compete Clause Rule has been officially vacated at the federal level, non-compete agreements remain subject to Section 5 of the FTC Act, state statutes, and common law. Employers must continue to navigate a complex patchwork of state laws. Some states (e.g., California, Oklahoma, North Dakota, Minnesota, Washington, and Wyoming) ban most non-competes, while others enforce them with significant restrictions or limit them to higher-wage-earning employees. A few states, like Florida and Kansas, have taken the opposite approach and enacted legislation providing for a presumption of enforceability for covered non-compete agreements for a certain period of time.

As discussed in more detail below, the FTC may investigate or bring a claim asserting that a non-compete agreement violates Section 5 of the FTC Act as an unfair method of competition—even if the agreement is otherwise lawful per state law. Nevertheless, compliance with state law may still be raised as a potential defense in such proceedings.

### ***FTC's continued enforcement of allegedly illegal non-competes***

Even without the FTC's Non-Compete Clause Rule, non-competes remain subject to challenge under federal antitrust laws such as the Sherman Act and Section 5 of the FTC Act, especially when used to limit worker mobility in an anticompetitive manner. State attorneys general and private litigants are increasingly active in this space.

The FTC has demonstrated its priority of addressing harmful labor market conduct through case-by-case enforcement and public advocacy. On September 4, 2025, the FTC filed an enforcement action and simultaneous proposed consent order against a pet cremation company, Gateway Services, Inc., alleging that non-competes imposed on almost all of the company's employees, regardless of skill level or job duties, constituted unfair methods of competition that violated Section 5 of the FTC Act.

According to the FTC’s complaint, nearly all of Gateway’s employees were subject to non-competes that prohibited them from working in the pet cremation service industry anywhere in the U.S. for one year after the termination of their employment. The FTC alleges that these non-competes were applied “without any individualized consideration of an employee’s role” and affected over 1,780 employees—including hourly workers such as facility-level laborers at cremation facilities, drivers, and customer service representatives.

In an accompanying statement, Chairman Andrew Ferguson stated that the FTC will enforce existing antitrust laws “vigorously against those who demand their employees enter into noncompete agreements so pernicious and so onerous as to make them anticompetitive” and will do so using the Sherman Act’s pre-existing “rule of reason” analysis (which is, generally, a case-specific reasonableness test). Chairman Ferguson signaled that the FTC will shift to a “steady stream” of enforcement actions to define, case by case, the boundaries of lawful non-compete agreements under the Sherman Act and Section 5 of the FTC Act.

In light of this enforcement action, employers should make sure that their post-employment non-competes are reasonable in scope and narrowly tailored to protect legitimate business interests. Adopting a more individualized approach to the use of non-competes may help avoid the FTC’s scrutiny, including the risk of a company-wide investigation, reputational damage, and the imposition of burdensome consent orders and compliance obligations.

In addition, on September 4, 2025, the FTC launched a public inquiry program to “better understand the scope, prevalence, and effects” of post-employment noncompete agreements and to help identify future enforcement targets. The FTC encourages employees restricted by non-compete agreements and employers facing hiring difficulties due to a rival’s non-compete agreements to share information about the use of non-compete agreements, their impacts, and their potential justifications. The request for information specifically identified “healthcare markets” as an area of concern, stating that putative “harms” from non-competes with doctors and nurses “may be particularly acute in rural areas where medical services are already stretched thin.”

On September 10, 2025, the FTC announced it issued warning letters to healthcare employers and staffing firms “urging them to conduct a comprehensive review of their employment agreements—including any non-competes or other restrictive agreements—to ensure they are appropriately tailored and comply with the law.” The FTC emphasized its authority under Section 5 of the FTC Act to

investigate unfair methods of competition, including non-compete agreements that are unjustified, overbroad, or otherwise unfair or anticompetitive.

## ***Consider alternatives***

Courts and regulators have repeatedly emphasized the use of less-restrictive alternatives, such as non-disclosure agreements (NDAs), non-solicitation agreements, and robust trade secret protections. Overly broad or unnecessary non-competes, non-solicitation agreements, or other restrictive covenants can still invite legal risk.

## **Next steps for employers**

**Review and update agreements:** Ensure your restrictive covenant agreements comply with applicable state law and are narrowly tailored to protect legitimate business interests. To this end, in an increasingly “remote” work environment, make sure the correct, applicable state law is applied to the employee signing the agreement.

**Monitor state developments:** States continue to update existing restrictive covenant statutes and enact new prohibitions against non-competes. Employers with multistate operations should track developments in all relevant jurisdictions.

**Audit and train:** Conduct regular audits of your use of non-competes and related agreements, and train Human Resource departments and management in lawful alternatives and best practices.

## **What this means to you**

While the FTC’s Non-Compete Cause Rule is no longer a threat, the debate over the use and enforceability of non-competes is far from over. Employers should remain vigilant, use non-competes only where truly necessary, and ensure compliance with evolving state and federal law.

## **Contact us**

Husch Blackwell’s Labor & Employment and Antitrust teams are closely monitoring these developments and are available to assist with compliance strategies, agreement reviews, and litigation defense. Please contact Barbara Grandjean, Wendy Arends, Courtney Steelman, Chengzhuo He, or your Husch Blackwell attorney for more information.

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