

FTC Drops Noncompete Rule Challenge, Shifts to Case-by-Case Enforcement

September 9, 2025

The Federal Trade Commission (“FTC”) has signaled its next phase on employee noncompetes, pairing a new enforcement action with a public inquiry, and taking steps to dismiss its appeals in [Ryan, LLC v. FTC \(5th Cir.\)](#) and *Properties of the Villages v. FTC* (11th Cir.) following the vacatur of its [nationwide noncompete rule](#). These actions reflect the FTC’s shift away from broad rulemaking and toward case-by-case enforcement, while confirming that the agency intends to remain active in policing noncompetes. Together, these developments indicate that further targeted investigations and consent orders are likely, particularly against companies that broadly use noncompete agreements and in certain industries such as healthcare.

Targeted Noncompete Enforcement. On September 4, 2025, the FTC [announced](#) an enforcement action and consent package against Gateway Pet Memorial Services, the nation’s largest pet cremation business, alleging that nearly 1,800 employees—from executives to hourly workers—were unlawfully bound by one-year, nationwide noncompete agreements in violation of Section 5 of the Federal Trade Commission Act (the “FTCA”).

Under the FTC’s [proposed consent order](#) (if made final), with respect to employees and third-party contractors:

- Gateway must cease entering into, maintaining, enforcing, or threatening to enforce covered noncompete agreements and may not state or imply that a covered employee is subject to a noncompete agreement. Importantly, the definition of covered noncompete agreement does not include (i) agreements containing a noncompete entered into with a director, officer, or senior employee, in conjunction with the grant of equity or equity-based interests, or (ii) sale-of-business noncompetes where the individual has a pre-existing equity interest in the business being sold;
- Gateway may not restrict a covered employee from soliciting current or prospective customers, except for those with whom the employee had direct contact or personally provided services during their last 12 months of employment; and

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- Gateway must provide notice to affected current and former employees (in a prescribed form) that existing covered noncompetes are null and void within 45 days of issuance of a final order; implement onboarding notices for new covered employees within 30 days; and comply with reporting and monitoring obligations for 10 years.

Individuals listed in a confidential appendix are excluded from the definition of covered employees. Chairman Ferguson explains the categories for these exclusions: equity holders, their families, “very senior managers,” those with outside business relationships with Gateway, or those who have more unique access to competitively sensitive information.

In a [statement](#) by Chairman Andrew Ferguson joined by Commissioner Melissa Holyoak with respect to the order, Chairman Ferguson emphasized that a case-specific, enforcement-driven approach to noncompetes will continue. Chairman Ferguson states that a “steady stream of enforcement actions against an unlawful practice provides the markets with transparency about what the agency believes the law requires. . . . In response, market participants will often shift their behavior to comply with the agency’s articulated understanding of the law.” As it relates to FTC enforcement priorities, Chairman Ferguson notes that the FTC will generally apply the common-law reasonableness inquiry, “which asks whether the restriction is no greater than necessary to protect the employer’s legitimate interests, and balances those interests against the hardship inflicted on the employee and any potential injury to the public.”

For private equity (“PE”) sponsors, it is notable that neither the complaint nor the proposed consent order addresses Gateway’s PE ownership or roll-up strategy. The FTC majority focused narrowly on the noncompete provisions themselves, while only Commissioner Rebecca Slaughter’s [dissent](#) raised concerns about ownership structure and acquisition strategy.

The public will have 30 days to submit comments on the proposed consent agreement package. When the order is issued by the FTC on a final basis, it will carry “the force of law with respect to future actions.”

FTC Request for Information on Noncompetes. In parallel, the FTC [announced](#) the issuance of a [Request for Information](#) (“RFI”) seeking public input to better understand the scope, prevalence, and effects of noncompete agreements across industries, as well as to gather information to inform possible future enforcement actions. The RFI notes that noncompetes may depress wages, limit job mobility, impede new business formation, and particularly harm healthcare labor markets. The FTC emphasizes that it will continue to assess noncompete agreements on a case-by-case basis.

The RFI encourages members of the public, “including current and former employees restricted by noncompete agreements, employers facing hiring difficulties due to a rival’s noncompete agreements, and market participants in the healthcare sector in particular,” to provide information about the use of noncompetes.

The Commission invites responses to specific questions, including the following:

- Which employers currently use noncompetes, for what roles, and at what salary levels?
- What are the terms (e.g., duration, geographic scope), and how are they enforced?
- Have noncompetes led workers to turn down or avoid seeking new job opportunities, take lower-paying jobs, change industries, relocate, or incur legal costs?
- Do noncompetes limit employees from starting or operating their own businesses or make it more difficult for employers to hire?
- Have they reduced innovation?
- Does the employer use non-solicitation or non-recruitment agreements that limit former employees from working with their former customers or employees?
- Have noncompetes affected wages, labor mobility, or the availability, quality, and cost of healthcare services? Have they made it more difficult for providers of healthcare services to hire physicians, nurses, or other professionals?

Comments are due November 3, 2025. The RFI includes instructions for making a confidential submission.

No Further Appeals of FTC Noncompete Ban. The FTC also [announced](#) on September 5, 2025, that it has taken steps to dismiss its appeals in *Ryan* and *Properties of the Villages*, and to accede to the vacatur of the FTC’s nationwide noncompete rule. The FTC will instead pivot to case-by-case enforcement under Section 5 of the FTCA. In his statement to the proposed Gateway order, Commissioner Ferguson reiterated that the FTC “will act as a cop on the beat, enforcing the antitrust laws against unlawful noncompete agreements to protect American workers, rather than trying to legislate them away.” In his [statement](#) to the dismissal of the appeals in support of the FTC’s noncompete rule, Commissioner Ferguson previewed 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.” Commissioner Mark R. Meador in a

[concurring statement](#) outlined the general analytical framework he believes the FTC should apply when evaluating employee noncompetes.

NEXT STEPS FOR EMPLOYERS

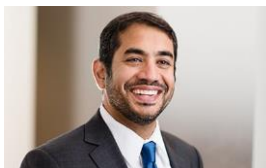
- **Audit existing agreements.** Employers should ensure that noncompetes are narrowly tailored in scope and duration and supported by legitimate business interests. Employers should exercise caution when entering into or maintaining noncompete agreements with low-wage earners, even in states where such noncompetes are permitted, without a compelling business reason for doing so.
- **Monitor FTC priorities.** The FTC has clearly signaled that enforcement against noncompete agreements will continue, particularly against companies that broadly use noncompete agreements and in certain industries such as healthcare. Employers before or soon to be before the FTC in other contexts (e.g., merger review under the Hart-Scott-Rodino Act) should proactively evaluate their use of noncompetes and consider modifications where appropriate.
- **Track state-level activity.** Employers should carefully monitor state-specific developments given the increasing complexity and variation across jurisdictions. State legislatures and courts continue tightening restrictions on noncompetes, with some exceptions of states passing laws going the other direction (e.g., Florida and Kansas). Continuing a growing trend, in the past year alone, several states—including Arkansas, Colorado, Illinois, Indiana, Montana, Oregon, Texas, and Utah—have enacted or amended laws banning or significantly restricting noncompete agreements for physicians and other healthcare professionals.
- **Evaluate alternatives.** We continue to recommend that employers enhance trade secret protections beyond the use of noncompetes and consider compensation changes and alternative arrangements, including garden leave arrangements, repayment agreements, retention bonuses or longer vesting periods for long-term awards (e.g., cliff-vesting or backloaded schedules).

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