

The FTC's Noncompete Ban Is Dead – But Enforcement Is Alive and Well

September 18, 2025
By Sarah Goodman



The Federal Trade Commission has officially withdrawn its appeal in *Ryan, LLC v. FTC*, putting an end to its controversial attempt to ban noncompete agreements through agency rulemaking. That effort may be over, but the commission has made clear that employers are not free to impose noncompetes “willy-nilly.” As FTC Chair Ferguson recently cautioned, the failure of the Biden Administration’s sweeping ban does not mean the agency is abandoning the field.

From Rulemaking to Case-by-Case Enforcement

Rather than pursuing broad regulations, the FTC has pivoted toward an enforcement model. On September 4, the commission announced a complaint against Gateway Services, Inc. over its use of noncompete clauses. Alongside the complaint, Commissioners Ferguson and Holyoak issued a joint statement emphasizing a new philosophy – using targeted enforcement to signal to the market what the FTC views as unlawful practices. In their words, a “steady stream of enforcement actions” provides transparency and nudges employers toward compliance without sweeping rulemaking.

This case-by-case strategy echoes traditional antitrust enforcement – send a clear warning through precedent, not regulation.

Public Input Still Matters

At the same time, the FTC issued a Request for Information (RFI) seeking data about how noncompetes are used, justified, and experienced across industries. While the agency insists this is not a return to rulemaking, the RFI will likely shape enforcement priorities, especially sector-specific initiatives. Employers with legitimate business interests in protecting trade secrets or client relationships should consider submitting comments before the November 3 deadline to ensure their perspective is not drowned out by opponents.

Healthcare in the Crosshairs

The FTC has already signaled special scrutiny of healthcare employers. On September 10, Chair Ferguson sent letters to large health systems and staffing firms urging them to review restrictive covenants in their employment agreements. The move is striking given that states already regulate healthcare noncompetes more aggressively than nearly any other sector – dozens of new bills have been proposed in the past year alone.

Why the added federal attention? One explanation may be the flood of public comments targeting healthcare during last year’s failed rulemaking process. In other words, political pressure and anecdotal evidence may be driving the FTC’s focus more than labor market data – where healthcare remains one of the strongest employment sectors nationwide.

How Employers Can Avoid the “Willy-Nilly” Label

The Gateway Services complaint and other FTC actions provide insight into what will draw scrutiny. Employers should work closely with counsel to design noncompete and restrictive covenant programs that focus on legitimate interests rather than blanket employee control. Key considerations include:

- **Legitimate purpose:** Use restrictive covenants to prevent unfair competition and protect confidential information, not merely to retain employees or block mobility.
- **Role-specific tailoring:** Reserve noncompetes for positions where they are truly necessary (e.g., senior executives, client-facing sales roles). Apply different restrictions for different levels of employees.
- **Narrower alternatives:** Consider whether non-solicitation, confidentiality, or customer protection clauses can adequately protect the business.
- **Reasonable scope:** Draft restrictions that are proportionate in duration, geography, and covered activities. Agreements that prevent someone from working for a competitor “in any capacity” – say, even as a janitor – are likely to raise red flags.
- **Compliance with state law:** Many states have already tightened restrictions on noncompetes. Ignoring state law not only risks invalidation but may also invite FTC scrutiny.

The Bottom Line

While the federal ban is off the table, the FTC is not retreating. Employers should expect enforcement actions to continue, particularly in sectors like healthcare, and should take this moment to review their agreements. A thoughtful, legally sound approach to restrictive covenants will make it much harder for regulators to paint your practices as “willy-nilly.”