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FTC Abandons Nationwide Noncompete Ban and Reverts to Targeted Enforcement

Client Advisories

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Sept. 11, 2025 - On Sept. 5, the Federal Trade Commission officially abandoned its appeal in the case that challenged the Biden administration's rule banning most employee noncompete clauses nationwide. This decision effectively ends the possibility of a sweeping, nationwide ban on noncompete agreements, at least for now. However, employers should not interpret this as a green light to freely use noncompetes. The FTC, under new leadership, has made it clear that it intends to aggressively pursue enforcement actions on a case-by-case basis against noncompete agreements deemed anticompetitive.

Background on the FTC noncompete rule and legal challenges

- **The Rule's Origins:** On April 23, 2024, the FTC, then under Democratic leadership, voted 3-2 to finalize a rule that would have effectively banned most new and existing noncompete clauses nationwide. The rule was scheduled to take effect in September 2024. See our [client alert](#).
- **Texas Federal Court Case (Ryan LLC):** Immediately after the FTC announced the rule, the tax services firm Ryan LLC filed a lawsuit challenging the rule. In August 2024, a Texas federal court found that the FTC had exceeded its statutory authority and that the rule was "arbitrary and capricious." The court set aside the rule on a nationwide basis. See our [client alert](#).
- **Florida Federal Court Case (Properties of the Villages Inc.):** In a separate challenge, a Florida federal court issued a limited, plaintiff-specific injunction against the rule in litigation brought by a retirement community company. In contrast to the Texas court, the Florida court's ruling was based on the "major questions doctrine." The court concluded that the FTC could not point to clearly expressed congressional intent authorizing it to enact a rule of such extraordinary economic significance.
- **FTC Appeals and Abandonment:** The FTC initially appealed both the Texas and the Florida rulings. However, after a change in commission leadership, the agency dismissed both appeals on September 5, 2025. This action effectively accepts the lower court rulings and puts a definitive end to the nationwide ban, at least during the current administration.

The FTC's targeted enforcement strategy and the Gateway Services case

Instead of a broad rule, the FTC will now rely on a targeted, case-by-case enforcement strategy. This approach was immediately demonstrated by two key actions:

- Gateway Services Inc. Settlement: Just one day before dismissing its appeals, the FTC announced a settlement with pet cremation company Gateway Services Inc. The FTC's complaint alleged that Gateway required nearly all employees, including hourly and low-wage workers, to sign noncompete agreements that prohibited them from working for a competitor anywhere in the U.S. for one year after leaving.
- Terms of the Settlement: The proposed consent order would bar Gateway from enforcing these existing noncompetes and from entering into similar agreements in the future. It would also require Gateway to notify the approximately 1,800 affected workers that their noncompetes are no longer in effect.
- Request for Information: Concurrently, the FTC issued a request for public input to gather information on the "scope, prevalence, and effects" of employer noncompete agreements. This inquiry is intended to help identify future targets for enforcement actions.
- Days after dismissing its appeals, the FTC announced that it had sent warning letters to multiple healthcare employers and staffing companies raising concerns about overly broad noncompete restrictions in their employment contracts with healthcare providers.

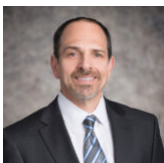
Steps employers can take

The FTC's recent actions signal a continued focus on addressing anticompetitive noncompete agreements through enforcement actions and public advocacy rather than broad rulemaking. Employers should be proactive in reviewing their practices to ensure compliance and minimize potential legal risks.

- Review Existing Agreements: With the nationwide rule vacated, state law and federal antitrust principles govern the enforceability of noncompete agreements. Employers should review all restrictive covenant agreements to ensure they are narrowly tailored to protect legitimate business interests.
- Tailor Agreements to Specific Roles: The FTC's action against Gateway highlights the risks of using broad, boilerplate noncompetes for all employees, especially lower-wage workers. Consider whether a noncompete is indispensable for each specific role.
- Consider Alternatives: Alternatives like non-solicitation clauses, confidentiality agreements and trade secret protections can often sufficiently safeguard a company's interests without posing the same antitrust concerns as overbroad noncompetes.
- Document Justifications: For any noncompetes used, have clear and well-documented business justifications for their necessity.
- Stay Informed: Monitor developments in both federal enforcement priorities and state-specific noncompete laws. The legal landscape remains dynamic, and employers should be proactive in seeking legal counsel to ensure compliance.

For further guidance or to discuss these new developments, please contact us at Hughes Hubbard & Reed LLP.

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