THE FTC'S NONCOMPETE BAN IS DEAD—BUT ENFORCEMENT IS FULL SPEED AHEAD

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US Labor, Employment, and Workplace Safety Alert

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On 4 September 2025, the US Federal Trade Commission (FTC) ordered the largest pet cremation company in the United States to stop enforcing noncompete agreements with nearly 1,800 employees.[1] Why? The agency says they unfairly restrict worker mobility and reduce competition in the labor market. While the FTC has now abandoned its sweeping proposed rule to ban noncompete agreements nationwide,[2] the agency has made it clear that it will use its enforcement authority to crack down on noncompete agreements it sees as anticompetitive, especially those targeting lower-wage or nonexecutive employees.

THE FTC WILL RELY ON ENFORCEMENT INSTEAD OF RULEMAKING TO CRACK DOWN ON EMPLOYERS' USE OF RESTRICTIVE COVENANTS

The pet cremation company had required workers across its 100 locations—ranging from executives to hourly laborers—to sign agreements barring them from working in the pet cremation industry anywhere in the country for a full year after leaving the company. The FTC deemed these agreements unfair and anticompetitive, violating Section 5 of the Federal Trade Commission Act.

This enforcement action comes despite the FTC, on 5 September 2025, formally abandoning its appeal of court rulings that blocked its proposed noncompete ban. In other words, while the FTC is not moving forward with a formal rule banning noncompete agreements, its commitment to challenging overly restrictive agreements remains strong—and enforcement is expected to ramp up, as evidenced by the following statements and actions by the FTC over the past few weeks:

- FTC Chairman Andrew Ferguson issued a statement advocating for “a steady stream of enforcement actions against” employers' imposition of unreasonable noncompete agreements.[3]
- The FTC launched a public inquiry encouraging “[m]embers of the public including current and former employees restricted by noncompete agreements, and employers facing hiring difficulties due to a rival's noncompete agreements, [] to share information about the use of noncompete agreements.”[4]
- The FTC sent letters[5] to several healthcare employers and staffing firms urging a review of their employment agreements, noncompete agreements, and other restrictive agreements. The FTC again emphasized that “enforcement against unreasonable noncompete agreements remains a top priority” and encouraged companies to take a close look at their use of noncompete agreements and other restrictive covenants that limit worker mobility.

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WHAT THIS MEANS FOR EMPLOYERS

Even where employers' noncompete agreements comply with state law, they may still be vulnerable to federal scrutiny if they are overly broad, applied indiscriminately, or used in ways that suppress competition or worker mobility.

According to Chairman Ferguson, the FTC will take a "fact-specific approach" when assessing the lawfulness of noncompete agreements, similar to the common-law reasonableness inquiry applied in many state courts.[6] The key overarching question is 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. With this approach in mind, the FTC signaled that it will continue to pursue employers who use noncompete agreements in ways that:

- Apply to low-wage or nonexecutive employees;
- Lack a clear business justification;
- Restrict employees from working in entire industries or geographic regions; and
- Are used across the board, regardless of role or access to sensitive information.

STATE LAWS ARE EVOLVING—FAST

In addition to federal enforcement, state laws governing noncompete agreements continue changing rapidly. As of mid 2025:

- A few states (including California, Minnesota, and Oklahoma) have banned noncompete agreements with employees outright.
- 34 states and Washington, DC, impose restrictions, such as income thresholds, notice requirements, or industry-specific bans.
- New legislation has taken effect this year in Texas, Indiana, Montana, Oregon, and others, tightening the rules around enforceability.

WHAT SHOULD EMPLOYERS DO NOW?

- Audit their current noncompete agreements—especially those used for nonexecutive or hourly roles.
- Tailor agreements to protect legitimate business interests (e.g., trade secrets, client relationships) and avoid agreements with blanket restrictions.
- Consider alternatives, such as nondisclosure or nonsolicitation agreements, which face fewer legal challenges. However, employers should reference state-specific laws concerning nonsolicitation agreements, as some are subject to restrictions similar to those for noncompete agreements.
- Stay current on both federal enforcement trends and state-level legislative changes.

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If employers need help reviewing their agreements or updating their employment practices, the firm's Labor, Employment, and Workplace Safety practice and Antitrust, Competition, and Trade Regulation practice are closely tracking these developments and can help employers navigate this shifting landscape.

FOOTNOTES

[1] FTC Takes Action to Protect Workers from Noncompete Agreements, Fed. Trade Comm'n (Sept. 4, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/09/ftc-takes-action-protect-workers-noncompete-agreements.

[2] K&L Gates Legal Alert, Challenge Denied: District Court Rules That FTC's Impending Nationwide Ban on Noncompetes Is Unlawful and Blocks Its Implementation (August 21, 2024), https://www.klgates.com/Challenge-Denied-District-Court-Rules-that-FTCs-Impending-Nationwide-Ban-on-Non-Competes-Is-Unlawful-and-Blocks-Its-Implementation-8-21-2024.

[3] Statement of Chairman Andrew N. Ferguson Joined by Commissioner Melissa Holyoak In the Matter of Gateway Pet Memorial Services.

[4] Request for Information Regarding Employer Noncompete Agreements.

[5] FTC Chairman Ferguson Issues Noncompete Warning Letters to Healthcare Employers and Staffing Companies | Federal Trade Commission.

[6] Statement of Chairman Andrew N. Ferguson Joined by Commissioner Melissa Holyoak In the Matter of Gateway Pet Memorial Services.

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