

On September 5, 2025, the Federal Trade Commission (FTC) officially withdrew its notice of appeal in the litigation over the validity of its Non-compete Clause Rule,¹ thereby abandoning its challenge to the District Court's ruling invalidating that rule.

The FTC also acceded to the vacatur of the rule, meaning the agency acknowledged, formally and legally, that the District Court's decision to invalidate the rule stands.² Chairman Andrew Ferguson and Commissioner Melissa Holyoak, in statements accompanying the FTC's decision, emphasized that the FTC lacked authority for a sweeping rule, but would still police illegal non-competes through enforcement.³

The FTC's 2024 Non-compete Rule sought to ban nearly all post-employment non-compete agreements, requiring employers to rescind existing clauses and notify workers, with only narrow exceptions (such as for the sale of a business).⁴ The rule aimed to preempt state law, and invalidate millions of existing agreements by declaring them an "unfair method of competition" under Section 5 of the FTC Act.⁵ However, the US District Court for the Northern District of Texas (Judge Ada E. Brown) held that the FTC lacked the authority to promulgate the rule, and deemed it arbitrary and capricious, issuing a nationwide vacatur and injunction in August 2024.⁶ The FTC initially appealed that ruling and sought to have the appellate court endorse the rule's validity.

With its appeal withdrawn, the FTC is shifting strategy away from defending a broad regulatory ban and pivoting toward enforcement via targeted litigation and investigations. Notably, the FTC filed a complaint against Gateway Services (a pet cremation company), alleging anticompetitive use of non-compete agreements and simultaneously proposed a consent order limiting such clauses under certain conditions.⁷ This first post-vacatur action would bar Gateway Services from enforcing non-competes affecting approximately 1,800 employees from these restrictions that limit job mobility and the ability to negotiate wages and benefits.

While the rule is vacated, future disputes will be in the context of individual Section 5 cases and consent orders.⁸ Section 5's prohibition on unfair methods of competition allows the FTC to challenge anticompetitive conduct that may not violate the Sherman or Clayton Acts, but still harms competition, using a two-pronged test involving coercive or exploitative behavior and a negative impact on competitive conditions.⁹ Likely targets for future enforcement action include (1) low- and middle-wage workers where non-competes restrictions are less defensible; (2) across-the-board non-compete restrictions imposed on roles without access to competitively sensitive information; or (3) market-wide effects where clauses suppress employee mobility and wages. Moreover, non-compete clauses may also violate state laws banning unfair methods of competition and such clauses likely will continue to face challenges under those statutes, particularly in states like California and Minnesota that have among the most restrictive rules regarding the use of non-competes.

Concurrently with vacating the rule, the FTC launched a public inquiry through its Joint Labor Task Force to gather data on non-compete agreements more broadly.¹⁰ The task force has encouraged members of the public including current and former 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. Public comments are currently due no later than November 3, 2025.

¹ *Ryan, LLC v. FTC*, No. 24-10951 (5th Cir.)

² FTC Press Release, Sept. 5, 2025, available at <https://www.ftc.gov/news-events/news/press-releases/2025/09/federal-trade-commission-files-accede-vacatur-non-compete-clause-rule>

³ Statement of Chair Andrew N. Ferguson, joined by Commissioner Melissa Holyoak Regarding *Ryan, LLC v. FTC*, Sept. 5, 2025, available at https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-holyoak-statement-re-noncompete-acceding-vacatur.pdf

⁴ See <https://www.squirepattonboggs.com/-/media/files/insights/publications/2024/04/ftc-bans-non-competes-throughout-the-us/ftc-bans-noncompetes-throughout-the-us.pdf>

⁵ 15 U.S.C. Sec. 45(a).

⁶ *Ryan, LLC v. FTC*, No. 3:24-cv-00986-E, (N.D.Tex. Aug. 20, 2024).

⁷ FTC Press Release, Sept. 4, 2025, available at <https://www.ftc.gov/news-events/news/press-releases/2025/09/ftc-takes-action-protect-workers-noncompete-agreements>

⁸ 15 U.S.C. Sec. 45(a).

⁹ FTC Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act, Comm'n File No. P221202 (Nov. 10, 2022), available at https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyStatement.pdf

¹⁰ FTC Press Release, Sept. 4, 2025, available at <https://www.ftc.gov/news-events/news/press-releases/2025/09/federal-trade-commission-issues-request-information-employee-noncompete-agreements>

The FTC's withdrawal of its non-compete rule signals a decisive shift from sweeping regulatory action to information gathering and targeted enforcement under Section 5, focusing on specific cases where restraints are overbroad, coercive or harmful to labor market competition. While this retreat eliminates the prospect of a nationwide ban, employers should expect continued scrutiny through agency investigations, complaints, consent orders and litigation that will, case by case, further shape the boundaries of lawful non-compete use. Companies should also be on the lookout for potentially increased state enforcement actions under the state-specific non-compete bans. The outlook is therefore one of incremental but meaningful enforcement, with future court rulings likely to determine how far the FTC can go in reshaping the use of non-competes in employment agreements. In light of these developments, businesses may wish to revisit their policies regarding the use of non-competes to ensure they appropriately protect company interests while also complying with the obligations of the various jurisdictions in which they operate.

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