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FTC Shifts to Case-by-Case Scrutiny of Noncompete Agreements Amid Abandonment of Categorical Ban

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Over a two-day span, the Federal Trade Commission (FTC) recently provided a preview of its shift in approach to noncompete agreements. Rather than seeking to revive its 2024 rule that would have banned most post-employment noncompetes, the agency announced it will pivot to case-by-case enforcement actions against employers. This new direction follows the FTC's decision to drop its appeals of the now-defunct rule. We outline these important developments below.

FTC voluntarily dismisses appeals

On September 5, 2025, the FTC voluntarily dismissed its appeals in *Ryan, LLC v. FTC* (5th Cir.) and *Properties of the Villages, Inc. v. FTC* (11th Cir.). Previously, the US District Court for the Northern District of Texas in *Ryan* **blocked the FTC's noncompete rule nationwide**, while the Middle District of Florida in *Properties of the Villages* limited its injunction to the named plaintiff. The FTC appealed both decisions but has now abandoned those efforts.

Enforcement action and proposed consent decree against Gateway Services

On September 4, 2025, the FTC announced a proposed consent order to settle an enforcement action against Gateway Services and Gateway US Holdings (Gateway), a US pet cremation company, for violating Section 5 of the FTC Act by requiring nearly all employees – regardless of position – to sign noncompete agreements.

Since 2019, Gateway required nearly all new hires to sign agreements barring them from working in the pet cremation industry anywhere in the US for one year after leaving the company. More than 1,780 US employees are subject to these restrictions, except in California, where such agreements are banned. According to the FTC, Gateway imposed these noncompetes "without any individualized consideration of an employee's role," applying them not only to highly compensated executives but also to hourly workers, such as cremation facility laborers, drivers and customer service staff. The FTC alleged these broad restrictions limited job opportunities, depressed wages and benefits, caused personal hardship, and stifled competition. The agency also concluded that any legitimate business interests could have been protected through less restrictive means.

Under the proposed consent order, which is open for public comment, Gateway is prohibited from entering into, maintaining or enforcing noncompete agreements, with limited exceptions. Gateway also cannot tell anyone that a former employee is subject to a noncompete and must notify employees that they are no longer bound by these agreements. Additionally, Gateway cannot prevent employees from soliciting customers, except those with whom the employee had direct contact or provided services to in the last 12 months of employment.

Noncompete request for information

The same day, the FTC issued a sweeping **request for information (RFI)** inviting public comment to "better understand the scope,

prevalence, and effects of employer noncompete agreements, as well as to gather information to inform possible future enforcement actions." The agency is seeking input from a range of stakeholders –including current and former employees subject to noncompetes, employers encountering hiring barriers due to rivals' noncompetes and other market participants –on the roles covered by such noncompetes, rationales for their use, their terms, and their impact on labor mobility, wages and competition.

The FTC acknowledges that while noncompetes can sometimes serve valid purposes, many employers impose them "as a matter of course, simply inserting them into employment contracts without due consideration to whether the noncompete agreement is appropriate under the circumstances, including whether alternative contract terms would sufficiently advance procompetitive aims without or with less attendant anticompetitive harm." The agency cited evidence that noncompetes "may unjustifiably prevent workers from moving to better jobs, impede new business formation, prevent the shift of labor from over-served to under-served markets, and harm rival employers' ability to compete." The effects can lead to lower worker earnings, lost innovation, higher consumer prices and overall negative impacts on workers' and consumers' quality of life. Because employment contracts are private, the FTC's RFI aims to collect information to inform its enforcement and advocacy efforts. The deadline for public comment is November 3, 2025.

Next steps

These developments confirm that the FTC is taking a case-by-case approach to evaluating noncompete restrictions, increasing enforcement risks for employers that indiscriminately use such agreements without a legitimate business justification. Indeed, FTC Chair Andrew Ferguson's **statement regarding the withdrawal of the appeals** warned, "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." The agency has made good on this promise **by sending letters to large healthcare employers and staffing firms** urging them to conduct a "comprehensive review" of their noncompetes or other restrictive covenants to ensure they comply with applicable law and are appropriately tailored. The agency noted that healthcare employers may include "unreasonable noncompete agreements" for medical professionals, which can limit their employment options and limit patients' choices.

Employers should carefully reassess and balance their need for well-crafted restrictive covenants to protect core business assets against the growing risk of FTC enforcement. A one-size-fits-all approach – such as imposing noncompetes without regard to an employee's role or responsibilities – is increasingly unlikely to withstand review. Ferguson has emphasized that the agency will evaluate noncompetes on a fact-specific basis, underscoring the importance of tailoring agreements to legitimate business needs.

The proposed consent order in Gateway illustrates this approach: It expressly permits noncompetes for directors, officers or senior employees who receive equity and for individuals who have unique access to sensitive information. To minimize risk, any noncompete should be narrowly tailored in scope, geography and duration to the extent necessary to protect demonstrable business interests, such as trade secrets, customer relationships or significant training investments. Employers should also carefully consider, and perhaps even document, the business rationale for any agreement and remain attentive to ongoing legal developments, including FTC enforcement activity following the RFI. As Ferguson forewarned, the FTC under the Biden administration spent "immense resources" on the noncompete ban rule that "could have instead been expended on investigating and litigating specific cases that could have protected thousands of workers."

Employers with questions about restrictive covenants should contact their Cooley employment lawyer or one of the lawyers listed below.

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