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Insights

FTC Chairman Issues Warning Letters Regarding Employee Non-Compete Clauses

On September 10, 2025, FTC Chairman Andrew N. Ferguson sent letters to certain healthcare employers and staffing companies warning them about unreasonable non-compete agreements in employment contracts and urging them to ensure that any non-compete clauses “comply with applicable laws and are appropriately tailored to the circumstances.”¹ The FTC’s press release announcing the letters also encourages “all employers—not just those receiving letters today—to review their contracts closely” in advance of possible future enforcement actions.²

Chairman Ferguson’s letters came just days after the FTC voted to accede to the vacatur of the Non-Compete Clause Rule, which the Biden FTC issued in 2024,³ by withdrawing its notices of appeal in two recent cases.⁴ The Biden FTC concluded that virtually all non-compete clauses are an “unfair method of competition” and the Rule, in most cases, would have banned non-compete clauses put in place even before the Rule’s promulgation.⁵

¹ Andrew N. Ferguson, Noncompete Warning Letter Template (Sept. 10, 2025) (“Letter Template”), <https://www.ftc.gov/legal-library/browse/warning-letters/noncompete-warning-letter-template>.

² Federal Trade Commission, “FTC Chairman Ferguson Issues Noncompete Warning Letters to Healthcare Employers and Staffing Companies” (Sept. 10, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/09/ftc-chairman-ferguson-issues-noncompete-warning-letters-healthcare-employers-staffing-companies>.

³ Federal Trade Commission, “Federal Trade Commission Files to Accede to Vacatur of Non-Compete Clause Rule” (Sept. 5, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/09/federal-trade-commission-files-accede-vacatur-non-compete-clause-rule>.

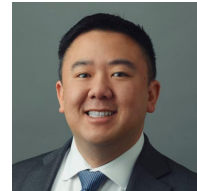
⁴ *Ryan, LLC v. FTC*, No. 24-10951 (5th Cir.); *Props. of the Villages, Inc. v. FTC*, No. 24-13102 (11th Cir.).

⁵ 89 Fed. Reg. 38342, 38342 (May 7, 2024).



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Despite its abandonment of the Rule through its appeal dismissals, the FTC signaled that it will “continue to enforce the antitrust laws aggressively against noncompete agreements” in appropriate cases.⁶ In fact, just the day before it withdrew its appeals, the FTC launched a formal request for information regarding employer noncompete agreements.⁷ In a statement addressing non-compete clauses and the FTC’s appeal withdrawal, Chairman Ferguson indicated that the FTC would prepare investigations and enforcement actions in “industries plagued by thickets of noncompete agreements.”⁸

Non-Compete Clause Rule: Issuance and Withdrawal

In January 2023, the FTC promulgated the Non-Compete Clause Rule pursuant to the FTC Act.⁹ After a public comment period, the FTC issued a final rule in May 2024 (which took effect in September 2024).

The final version of the Rule held, categorically, that entering into a non-compete clause with any employee after the Rule’s effective date was an unfair method of competition under Section 5 of the FTC Act.¹⁰ The Rule treated pre-existing non-compete clauses differently depending on whether it involved a “senior executive,” defined as a person in a policy-making position receiving compensation above certain thresholds.¹¹ The Rule made existing non-compete clauses non-enforceable for employees other than senior executives, but allowed pre-existing non-compete clauses with senior executives to remain in force.¹²

The FTC’s vote on the final Rule in 2024 was 3-2, with Commissioners Melissa Holyoak and Andrew N. Ferguson voting no¹³ and issuing dissents questioning the FTC’s authority to issue legislative rules for unfair methods of competition.¹⁴

In July 2024, a judge in the Eastern District of Pennsylvania denied an injunction against implementation and enforcement of the Rule, finding that the plaintiff

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⁶ Statement of Chairman Andrew N. Ferguson at 3 (Sept. 5, 2025) (“Ferguson Statement”), https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-holyoak-statement-re-noncompete-acceding-vacatur.pdf.

⁷ https://www.ftc.gov/system/files/ftc_gov/pdf/2025-Noncompete-RFI.pdf.

⁸ Ferguson Statement, *supra* note 6, at 3.

⁹ 89 Fed. Reg. 38342, 38342 (May 7, 2024).

¹⁰ 15 U.S.C. § 45.

¹¹ 89 Fed. Reg. 38342, 38502 (May 7, 2024) (defining “Senior Executive” as “a worker who: (1) Was in a policy-making position; and (2) Received from a person for the employment: (i) Total annual compensation of at least \$151,164 in the preceding year; or (ii) Total compensation of at least \$151,164 when annualized if the worker was employed during only part of the preceding year; or (iii) Total compensation of at least \$151,164 when annualized in the preceding year prior to the worker’s departure if the worker departed from employment prior to the preceding year and the worker is subject to a non-compete clause.”).

¹² 89 Fed. Reg. 38342, 38342.

¹³ Federal Trade Commission, “FTC Announces Rule Banning Noncompetes” (Apr. 23, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes>.

¹⁴ Dissenting Statement of Commissioner Melissa Holyoak (June 28, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/2024-6-28-commissioner-holyoak-nc.pdf; Dissenting Statement of Commissioner Andrew N. Ferguson (June 28, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-noncompete-dissent.pdf.

failed to establish a reasonable likelihood that the FTC exceeded its authority in issuing the Rule.¹⁵ But in August 2024, opinions from the Middle District of Florida and Northern District of Texas agreed with the dissenting commissioners, enjoining implementation and enforcement of the Rule and holding that the FTC exceeded its authority in issuing the Rule.¹⁶

The FTC initially appealed the two adverse findings, but in March 2025, the FTC moved to hold the appeals in abeyance in the Fifth and Eleventh Circuits. The motions cited the remarks of Commissioner Ferguson, whom President Trump appointed FTC Chairman in January 2025, stating that the FTC needed to “decide whether it’s a good idea [and] in the public interest to continue defending this [R]ule.”¹⁷ Both courts granted the motions.¹⁸

On September 5, 2025, the FTC announced that it voted 3-1 to dismiss the two appeals and accede to vacatur of the Rule.¹⁹ Chairman Ferguson issued a statement reiterating the view from his 2024 dissent that the FTC lacked the legal authority to issue the Rule.²⁰ But his statement made clear that the FTC was not acceding to all non-compete agreements. The day before the vote was announced, the FTC filed a complaint against the country’s largest pet-cremation business, alleging that it “knowingly wielded noncompete agreements to erect barriers in circumstances where it faced what it perceived to be tougher competition in an effort to curtail worker mobility and worker’s ability to negotiate better terms.”²¹ Chairman Ferguson’s statement also noted that the FTC was inviting public comment on “the scope, prevalence, and effects of noncompete agreements” and warned that the FTC would soon issue warning letters urging certain firms to “consider abandoning” non-compete agreements in advance of “investigations and enforcement actions.”²²

Commissioner Rebecca Kelly Slaughter—who was part of the majority voting in favor of the final Rule—issued a dissenting statement, accusing the majority of “decid[ing] to throw in the towel” and “choosing the side of controlling bosses over American workers.”²³

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¹⁵ *ATS Tree Servs., LLC v. FTC*, No. CV 24-1743, 2024 WL 3511630, at *19 (E.D. Pa. July 23, 2024).

¹⁶ *Props. of the Villages, Inc. v. FTC*, No. 5:24-CV-316-TJC-PRL, 2024 WL 3870380, at *1 (M.D. Fla. Aug. 15, 2024); *Ryan, LLC v. FTC*, 746 F. Supp. 3d 369, 375 (N.D. Tex. 2024).

¹⁷ *Ryan, L.L.C. v. FTC*, No. 24-10951, Dkt. 205 (5th Cir. Mar. 7, 2025); *Props. of the Villages, Inc. v. FTC*, No. 24-13102, Dkt. 116 (11th Cir. Mar. 7, 2025).

¹⁸ *Ryan, L.L.C. v. FTC*, No. 24-10951, Dkt. 210 (5th Cir. Mar. 12, 2025); *Props. of the Villages, Inc. v. FTC*, No. 24-13102, Dkt. 117 (11th Cir. Mar. 20, 2025).

¹⁹ Federal Trade Commission, *supra* note 3.

²⁰ Ferguson Statement, *supra* note 6, at 1–2.

²¹ *Id.* at 3 (internal quotation marks omitted); see Complaint, *In re Gateway Services, Inc. & Gateway US Holdings, Inc.*, https://www.ftc.gov/system/files/ftc_gov/pdf/Gateway-Complaint.pdf.

²² Ferguson Statement, *supra* note 6, at 3.

²³ Dissenting Statement of Commissioner Rebecca Kelly Slaughter at 1 (Sept. 5, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/slaughter-noncompetes-litigation-withdrawal-statement.pdf.

Warning Letters

Five days after acceding to the vacatur of the Rule, the FTC announced that Chairman Ferguson sent letters warning healthcare employers and staffing companies about non-compete clauses and other restrictive covenants.²⁴ A form template of the letter is available on the FTC's website [here](#). The letter notes that "narrowly tailored noncompetes can serve valid purposes," but that many employers include non-compete clauses "without due consideration to whether they are necessary and appropriate" and "whether less restrictive alternative contract terms may sufficiently achieve the same procompetitive purposes."²⁵ The letter asks recipients to "conduct a comprehensive review" to ensure that non-compete clauses and other restrictive covenants, which are not defined, are being used appropriately.

Chairman Ferguson noted that he sent letters to "many large employers and staffing firms in the healthcare sector"²⁶ but does not specify which entities received one. The letter also does not specify a deadline for these entities to review their employment agreements or a timeline upon which the FTC intends to initiate enforcement actions.

Key Takeaways

Non-compete clauses are likely to remain a subject of antitrust inquiry for both Democratic and Republican-appointed FTC Commissioners. Although the recent warning letters focus on the healthcare industry, both the DOJ and FTC have emphasized their interest in protecting workers in labor markets across all industries.²⁷

Employers across all industries should carefully scrutinize employment agreements that include restrictive covenants such as non-compete clauses to ensure compliance with both federal and state law. In assessing compliance, employers should carefully evaluate whether a restriction is narrowly tailored, including the following considerations:

- Is a non-compete clause necessary or could a less-restrictive option, such as a non-disclosure or non-solicitation agreement, provide the employer with sufficient protection?
- Is the duration of the non-compete clause reasonable in duration?

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²⁴ Federal Trade Commission, *supra* note 2.

²⁵ Letter Template, *supra* note 1, at 1.

²⁶ *Id.* at 3.

²⁷ For example, the DOJ secured its first successful criminal prosecution in a labor-market antitrust case in April 2025. U.S. Dept. of Justice, "Jury Convicts Home Health Agency Executive of Fixing Wages and Fraudulently Concealing Criminal Investigation" (Apr. 14, 2025), <https://www.justice.gov/opa/pr/jury-convicts-home-health-agency-executive-fixing-wages-and-fraudulently-concealing-criminal>. The DOJ and FTC issued a new set of labor antitrust guidelines in January 2025 immediately before President Trump's inauguration. U.S. Dept. of Justice & Federal Trade Commission, "Antitrust Guidelines for Business Activities Affecting Workers" (Jan. 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/p251201antitrustguidelinesbusinessactivitiesaffectingworkers2025.pdf.

- Is the geographic scope of the non-compete clause reasonably tailored to the employer's business?
- Is the scope of the type of work covered by the non-compete clause reasonably tailored to the employee's responsibilities and the employer's business?
- Is the employee in a profession involving specialized skills or a profession with particularly high demand and/or low supply?