

GIBSON DUNN



Antitrust & Competition Update

September 8, 2025

Trump FTC Abandons Non-Compete Clause Rule, Prioritizes Enforcement Actions

Gibson Dunn lawyers are closely monitoring these developments and are available to discuss these issues as applied to a particular business or assist in preparing a public comment for submission in response to the FTC's public inquiry.

On September 5, the U.S. Federal Trade Commission (FTC) announced a shift in its strategy for reining in anticompetitive non-compete agreements. The FTC voted 3-1 to dismiss its appeals in *Ryan, LLC v. FTC*, No. 24-10951 (5th Cir.), and *Properties of the Villages v. FTC*, No. 24-13102 (11th Cir.), and to accede to the vacatur of the Non-Compete Clause Rule by the Northern District of Texas.^[1] Had it gone into effect, the Non-Compete Clause Rule would have banned the use of non-compete agreements nationwide, impacting 30 million workers by the FTC's own estimates. We previously reported the details of the Final Rule [here](#). On September 8, the Fifth Circuit issued an order formally dismissing the *Ryan* appeal.^[2] The Non-Compete Rule was promulgated in April 2024, but rendered unenforceable nationwide after a team led by Gibson Dunn attorneys persuaded the court to set it aside. You can read more about Gibson Dunn's work obtaining that result [here](#) and [here](#).

In his statement accompanying the dismissals, Chairman Andrew N. Ferguson, joined by Commissioner Melissa Holyoak, emphasized that the FTC remains concerned with the anticompetitive effects of non-compete agreements, but will shift its focus from defending the Non-Compete Rule to investigating and litigating specific cases.^[3] Commissioner Mark Meador agreed, stating that he "fully support[s] rigorous enforcement against noncompete agreements."^[4] Chairman Ferguson warned that companies "in industries plagued by thickets of

noncompete agreements” will receive warning letters from his office in the near term, “urging them to consider abandoning those agreements.”[\[5\]](#)

In his concurring statement, Commissioner Meador listed several factors that are important when evaluating non-competes, which may indicate enforcement priorities for the FTC going forward.[\[6\]](#) These factors include:

- “[W]age and skill level” of workers required to sign non-compete agreements;
- “Deployment in a distribution network,” where such agreements may discourage horizontal competition;
- “Independent contractors,” with whom non-compete agreements “may more closely resemble exclusive dealing”;
- “Likelihood of Free Riding” absent non-compete agreements;
- “Availability of Less Restrictive Alternative[s],” such as non-disclosure agreements, customer non-solicitation agreements, and intellectual-property protections;
- “Scope and Duration” of the non-compete agreements, with particular concern for agreements lasting longer than one to two years, applying more broadly than the geographic boundaries of the employer’s current operations or the locations where the employee performed regular duties, and restricting an employee’s ability to pursue work in industries or professions unrelated to the company’s core business or the employee’s specific role;
- “Market Power” of the employer; and
- “Evidence of Economic Effects,” such as reduced labor mobility or increased barriers to entry.[\[7\]](#)

Focus on Enforcement Actions

The FTC has taken immediate steps to implement this shift in priorities. On September 4, 2025, the FTC filed a complaint against Gateway Services and its subsidiary Gateway US Holdings, Inc. (collectively, Gateway)—the largest pet cremation services company in the United States, with almost 2,000 U.S.-based employees.[\[8\]](#) The FTC alleges that, beginning in 2019, Gateway adopted a policy of requiring all new employees to sign a non-compete agreement regardless of the given employee’s position or responsibilities.[\[9\]](#) These agreements typically prohibited employees from working in the pet cremation service industry anywhere in the United States for one year following their employment with Gateway.[\[10\]](#) The FTC also alleges that, in at least one instance, Gateway responded to the entry of a competing pet cremation business by requiring all its employees in that market to sign non-compete agreements, including hourly employees who operated the crematories and transported the deceased pets from veterinary clinics to Gateway’s facilities.[\[11\]](#) According to the FTC, these non-compete agreements enabled Gateway to suppress competition in the labor market and to impede the entry and expansion of Gateway’s competitors in the pet cremation services industry.[\[12\]](#)

Alongside the complaint, the FTC voted 3-1 to approve a proposed consent order against Gateway that prevents Gateway from using non-compete clauses in its employment agreements,

with limited exceptions.^[13] The FTC is taking public comments on the proposed order, which permits Gateway to enter into non-compete agreements as part of “the sale of a business, provided that individuals subject to such an agreement have a pre-existing equity interest in the business being sold.”^[14] The proposed order also exempts certain specific employees, including equity holders, those with outside business relationships with Gateway, very senior managers, and those with unique access to confidential information.^[15]

The same day, the FTC’s Joint Labor Task Force, which was launched earlier this year,^[16] initiated a public inquiry, calling for comments from current and former employees and rival employers affected by non-compete agreements.^[17] The request for information specifically identified “healthcare markets” as an area of concern, stating that putative “harms” from non-competes with doctors and nurses “may be particularly acute in rural areas where medical services are already stretched thin.”^[18] Comments are requested by November 3, 2025.

Meanwhile, non-competes continue to be the subject of intense focus at the state level. Dozens of States have enacted legislation restricting non-competes based on factors such as profession or income level, and four States—California, North Dakota, Minnesota, and Oklahoma—ban nearly all non-competes. In other States, such as Florida, non-competes are widely enforceable.

Takeaways

Although the FTC has abandoned the Non-Compete Rule, it has clearly signaled an interest in challenging employment contracts and agreements between employers that increase labor market frictions. Applicable state laws, moreover, have seen significant revision in recent years. It is therefore imperative that companies ensure that their hiring and employment policies and practices conform with employment and antitrust laws. That includes:

- Take an inventory of restrictive covenants. Contract terms that could be viewed as limiting employee mobility could be included in employment and other agreements, such as equity plans and awards, severance agreements, and deal-based documents.
- Consider the duration, scope, and purpose of those provisions—including the groups of employees asked to enter into the provisions—and whether the provisions are tailored to achieve the company’s objectives.
- Monitor changes in federal and state law, with particular focus on States in which the company has a significant headcount.
- Understand that regulators may be interested in a wide range of workers, from low-wage to highly trained workers and both employees and independent contractors.

Gibson Dunn lawyers are closely monitoring these developments and are available to discuss these issues as applied to your particular business or assist in preparing a public comment for submission in response to the FTC’s public inquiry.

^[1] Press Release, Fed. Trade Comm’n, FTC 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>.

[2] Order at 1, *Ryan, LLC v. FTC*, No. 24-10951 (5th Cir. Sept. 8, 2025).

[3] Statement of Chairman Andrew N. Ferguson, Joined by Comm'r Melissa Holyoak, *Ryan, LLC v. FTC* (Sept. 5, 2025), at 3, https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-holyoak-statement-re-noncompete-acceding-vacatur.pdf (Ferguson *Ryan* Statement).

[4] Concurring Statement of Comm'r Mark R. Meador, *In the Matter of Non-Compete Clauses*, Matter No. P201200 (Sept. 5, 2025), at 1, https://www.ftc.gov/system/files/ftc_gov/pdf/meador-statement-noncompete-agreements-9.5.25.pdf (Meador Statement).

[5] Ferguson *Ryan* Statement, at 3.

[6] Meador Statement, at 3–5.

[7] *Id.*

[8] Complaint, *In re Gateway Pet Memorial Servs.*, Matter No. 2210170 (Sept. 4, 2025), ¶¶ 1, 6–7, https://www.ftc.gov/system/files/ftc_gov/pdf/Gateway-Complaint.pdf.

[9] *Id.* ¶ 8.

[10] *Id.* ¶¶ 1, 10.

[11] *Id.* ¶¶ 10, 14.

[12] *Id.* ¶¶ 15–18.

[13] See Decision and Order, *In re Gateway Pet Memorial Servs.*, Matter No. 2210170 (Sept. 4, 2025), § II., https://www.ftc.gov/system/files/ftc_gov/pdf/Gateway-DecisionOrder.pdf.

[14] *Id.* § I.G.

[15] *Id.*; see also Statement of Chairman Andrew N. Ferguson, Joined by Comm'r Melissa Holyoak, *In the Matter of Gateway Pet Memorial Services*, Matter No. 2210170 (Sept. 4, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/gateway-ferguson-holyoak-statement-2025.09.04.pdf.

[16] Press Release, Fed. Trade Comm'n, FTC Launches Joint Labor Task Force to Protect American Workers (Feb. 26, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/02/ftc-launches-joint-labor-task-force-protect-american-workers>.

[17] Press Release, Fed. Trade Comm'n, FTC Issues Request for Information on Employee Noncompete Agreements (Sept. 4, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/09/federal-trade-commission-issues-request-information-employee-noncompete-agreements>.

[\[18\]](https://www.ftc.gov/system/files/ftc_gov/pdf/2025-Noncompete-RFI.pdf) Request for Information, Fed. Trade Comm'n, Request for Information Regarding Employer Noncompete Agreements (Sept. 4, 2025), https://www.ftc.gov/system/files/ftc_gov/pdf/2025-Noncompete-RFI.pdf.

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