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FTC Shifts Approach to Non-Compete Enforcement

The Federal Trade Commission dropped its attempt to ban almost all employer-worker non-compete agreements by rule. It will instead focus on bringing case-by-case enforcement actions.

On September 5, 2025, the Federal Trade Commission (FTC) issued a statement “acced[ing] to the vacatur” of its non-compete clause rule. That [rule](#) would have banned nearly all employer-worker non-compete agreements in the United States. The FTC also filed an unopposed motion in the United States Court of Appeals for the Fifth Circuit to dismiss its appeal of the August 2024 judgment of the United States District Court of the Northern District of Texas that held unlawful and set aside the non-compete clause rule under the Administrative Procedure Act (APA) and ordered that the rule “shall not be enforced or otherwise take effect.” The FTC similarly moved to dismiss its appeal in the Eleventh Circuit of a preliminary injunction against enforcement of the rule. The Federal Rules of Appellate Procedure provide that the appeals must be dismissed in these circumstances.

The impending dismissals of these appeals will bring to an end, for now, the FTC’s efforts to implement a broad administrative rule banning employer-worker non-compete clauses nationwide. The final judgment of the Northern District of Texas stands. Pursuant to the terms of that order, the rule is “set aside” and because, according to the court, “the APA does not contemplate party-specific relief,” the FTC may not enforce the rule against any entity anywhere in the United States.

We note that a recent Supreme Court opinion, *Trump v. CASA, Inc.*, No. 24A884 (June 27, 2025), raised but did not answer the question whether the power of courts to “hold unlawful and set aside agency action” under the Administrative Procedure Act authorizes federal courts to vacate federal agency action with universal effect. However, because of the FTC’s motions to dismiss the appeals and accede to the vacatur of the rule, the answer to that question is left for another day. It may be for a future FTC to argue that the court order setting aside and precluding enforcement of the rule nationwide was impermissibly universal.

We also note that the demise of the rule does not mean that the FTC will no longer focus on non-compete agreements. To the contrary, the FTC has made clear that employer-worker non-compete agreements remain a top enforcement priority. However, instead of pursuing a strategy of *ex ante* regulation, the FTC is bringing individual enforcement actions against particular entities that, in its determination, have used non-competes as unfair methods of competition. Just [last week](#), the FTC issued an [order](#) to enjoin a company from enforcing or entering into non-compete agreements with many of its employees on the grounds that the agreements were, in the circumstances, impermissibly broad in geographic and temporal scope and applied to nearly all of the company’s employees regardless of position or responsibilities.

The upshot is that while there is no broad nationwide ban on non-competes currently in effect, companies still must ensure compliance with various [state laws](#), and should evaluate the potential risk that their particular use of non-competes could

result in an FTC enforcement or private action. Indeed, the FTC under Chairman Andrew N. Ferguson has launched a [labor task force](#) to investigate and bring such enforcement actions, and it is anticipated that in the coming days additional companies will be receiving warning letters from the FTC regarding their use of non-compete agreements. Further, on September 4, the FTC issued a [request for information](#) seeking public comment on “specific employers [that] continue to impose non-compete agreements,” including detailed information on those agreements and the circumstances in which they are used. All of this suggests that additional enforcement actions by the FTC against unfair uses of non-competes are likely forthcoming.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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