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# FTC Enforcement Action Targets Broad-Based Non-Compete Agreements

On September 4, 2025, the Federal Trade Commission (FTC) issued an [order](#) enjoining a private equity owned pet cremation company from enforcing non-compete agreements against nearly 1,800 of its employees. Notably, however, the FTC did not prohibit the company from continuing to enter into or enforce non-competes for directors, officers and senior employees that were entered into in connection with the grant of equity awards. Nor did it prohibit the company from entering into or enforcing non-competes in connection with a sale of a business. The FTC's order instead focuses on providing relief from non-competes to non-managerial lower-level hourly employees.

The targeted action is indicative of the current FTC majority's case-by-case adjudicative approach to enforcement. This is in contrast to the prior FTC majority's attempt at ex-ante regulation in the form of a rule that would have banned nearly all employer-worker non-compete agreements regardless of an employee's job description. That rule was [set aside](#) by a federal court in August 2024 and ordered not to be enforced. The FTC, under prior leadership, appealed that order but on September 5 moved to dismiss the appeal and "[accede\[d\]](#) to the vacatur" of the rule.

The FTC has also issued a request for information from the public on non-compete agreements, including individual companies' use of these agreements. The FTC stated that it may use information it learns to bring future non-compete enforcement actions.

## Enforcement Action

According to the FTC's [complaint](#), the respondent company's use of non-compete agreements in many, but not all, instances violated section 5 of the FTC Act, which declares "unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce" to be unlawful.

**Agreement terms.** The FTC alleged, among other things, that the company's non-compete agreements:

- generally had a one-year post-employment term;
- prevented post-employment work in the relevant industry anywhere in the United States;
- were required for all new employees at all levels of the company without regard to title or responsibility, including highly compensated managers as well as hourly laborers and customer service representatives; and
- restricted employees terminated in connection with the closing of company facilities from working in the industry.

**Anticompetitive effects.** The complaint, citing language from internal company documents, alleges that the company used non-competes to harm competition by depriving rivals of potential employees and "discouraging" employees from starting competing businesses. The FTC also alleges that the non-competes "alter[ed] the bargaining position between employees" and

the company; denied employees job opportunities; and “likely cause[d] lower wages and salaries, reduced benefits, less favorable working conditions, and, among other things, personal hardship to employees.”

**Rule of reason.** Rather than asserting that the agreements were per se illegal, the FTC appears to have used the rule of reason to evaluate the agreements. The complaint alleges that “[a]ny legitimate objectives of Gateway’s conduct . . . could have been achieved through significantly less restrictive means.” This leaves open the possibility that certain non-compete agreements could survive a challenge if they are the least restrictive alternative for achieving a lawful procompetitive objective.

**Consent order.** The FTC’s order, subject to public comment, requires that the company not enforce, enter into or attempt to enter into certain non-compete agreements with its employees. It further requires that the company provide notice to affected individuals and imposes ongoing compliance obligations.

**Exception for certain employees, equity grants and sale of business.** Importantly, the order does not cover non-competes with certain excluded employees listed in a nonpublic annex to the order; non-competes with directors, officers and senior employees entered into “in conjunction with the grant of equity or equity-based interests in” the company; or non-compete agreements “in conjunction with the sale of a business, provided that individuals subject to such an agreement have a preexisting equity interest in the business being sold.”

### Request for Information

In the [request for information](#) also issued on September 4, the FTC is 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.

### Significance and Action Item

The FTC’s rule that would have banned nearly all employer-worker non-compete agreements was set aside by court order. However, the FTC’s action serves as a reminder that certain non-competes may be challenged in enforcement proceedings or in private lawsuits. Companies with employee non-compete agreements should, in addition to ensuring compliance with various [state laws](#), evaluate the potential risk that they may become a target of an FTC enforcement action. Lengthy (though in this case as short as one year) agreements that are broad in geographic scope and affect a significant number of employees without regard to their job descriptions are at the highest risk of attracting the attention of the FTC. On the other hand, the FTC specifically exempted from its order non-competes for certain excluded employees and non-competes tied to senior employee equity grants or to the sale of a business. It is all the more prudent to undertake such an evaluation now, as several states are actively legislating in this area.

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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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