

Biden Administration's FTC Rule Banning Non-Competitions Has (Finally) Reached the End

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The Federal Trade Commission's (FTC) controversial Non-Compete Rule which banned most existing non-competition agreements and, with extremely limited exceptions, comprehensively banned employers from entering into new non-competition agreements is gone - according to the FTC itself. The Rule was challenged in several courts throughout the country, and the Biden Administration pursued appeals of court decisions that blocked the Rule from going into effect. Recently, the FTC announced it will be dismissing its appeals involving the Rule, indicating that litigation over the Rule is finally over.

On September 5, 2025, the FTC voted 3-1 to voluntarily dismiss its appeals in two separate appellate courts and accept the nationwide invalidation of the Rule. On September 8, 2025, the Fifth Circuit granted the voluntary dismissal. The FTC's announcement and subsequent dismissal signals the Commission's abandonment of the Biden-era Rule. A September 5, 2025 statement issued by FTC Chair Andrew Ferguson and joined by FTC Commissioner Melissa Holyoak issued a stinging rebuke of the Rule that purported to extinguish thirty million existing private contracts and "actively displaced laws across forty-six states," noting that the "Rule's illegality was patently obvious" from the outset.

Because there is no federal ban on non-compete agreements, state laws will continue to dictate whether non-compete agreements are enforceable. Some states, like North Dakota and Minnesota, have broad prohibitions against non-competes with narrow exceptions. Other states, like Nevada, prohibit the use of non-competes for hourly or low wage workers. Ohio and its surrounding states generally allow non-compete agreements so long as they comply with state law and judicial decisions focused on the reasonableness of the restrictions in the context of preventing unfair competition. Therefore, it is important for employers to remain educated regarding state law changes in this area. For example, the Michigan legislature introduced a bill in January that would prohibit employers from utilizing non-compete agreements, unless the non-compete agreement is tied to business sales. Other states are considering similar legislation.

Accordingly, even though the FTC has voted to vacate its non-compete ban, employers need to keep a watchful eye on legislative and judicial developments in the locations in which they do business.

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