

## **CLIENT GUIDANCE: FTC WITHDRAWS APPEAL OF NON-COMPETE RULE, BUT ITS ACTION AGAINST GATEWAY PET MEMORIAL SERVICES SIGNALS THAT ENFORCEMENT AGAINST RESTRICTIVE NON-COMPETE CLAUSES ON A CASE-BY-CASE BASIS IS THE NEW NORM AND MAY LEAD TO A STRING OF ENFORCEMENT ACTIONS**

The Federal Trade Commission ("FTC")'s view of employment agreements that restrict workers from moving to competitor firms has shifted again. Three days after Labor Day, the FTC put the final nail in the Biden administration's broad rule banning non-compete clauses while making it clear that overly restrictive non-compete clauses will still be challenged as unfair methods of competition under FTC Act Section 5 on a matter-by-matter basis.

The FTC voluntarily issued a [complaint](#) and [consent order](#) against Gateway Pet Memorial Services ("Gateway"), a leading provider of pet aftercare services, in a move that underscores the agency's objective of bringing enforcement actions against employers for non-compete agreements that do not survive Rule of Reason scrutiny. On September 4, 2025, the FTC announced that Gateway's use of non-compete clauses restricted workers' ability to seek new employment and stifled competition in the labor market in violation of Section 5 of the FTC Act. Hours later, the Commission voluntarily dismissed its appeal of a district court decision which voided the Biden-era Commission's rule banning non-competes.

The two moves signal that the Commission will continue to carefully scrutinize the impact of non-compete clauses on labor markets, but will do so on based on a tailored assessment of the impact of specific clause on employees, rather than a broad-based rule applicable across sectors and circumstances. This builds on the administration's cross-agency [Joint Labor Task Force](#) which is designed to keep US labor markets more competitive.

The FTC under Chair Ferguson chose Gateway as its first example in what it foreshadows to be a string of enforcement actions related to non-compete agreements. Chair Ferguson's [statement](#) accompanying the complaint and consent order makes clear that, while he views the FTC's now-vacated rule banning non-competes as "obviously unlawful," the FTC is nevertheless authorized and has a duty to "address[] noncompete agreements through enforcement actions against companies that misuse them in violation of the law." Signaling more non-compete enforcement actions to come, Chair Ferguson writes that "[a] steady stream of enforcement actions against an unlawful practice provides the markets with transparency about what the agency believes the law requires..." and "addressing noncompete agreements through continued enforcement actions will secure real, enduring relief for American workers."

Gateway's non-compete agreements were a good first test case. According to the FTC's complaint, Gateway required a wide range of employees—including those in non-executive and non-managerial positions—to sign non-compete agreements as a condition of employment. These agreements barred employees from working for or owning a competing business within a 100-mile radius for two years after leaving Gateway. The FTC found that these restrictions were imposed regardless of whether the employees had access to confidential information or client relationships, and that Gateway could not demonstrate any legitimate business need, such as the protection of trade secrets, to justify such sweeping limitations.

The complaint further details how Gateway threatened legal action against employees who breached the non-compete terms, creating a chilling effect that deterred workers from pursuing new opportunities. The FTC concluded that these practices were not only unnecessary but also unfairly limited worker mobility and competition. Under the terms of the consent order, Gateway is required to cease enforcing, threatening to enforce, or imposing non-compete restrictions on any current or former employees. The company must also notify all affected employees that their non-compete agreements are void and will not be enforced. In addition, Gateway is obligated to implement compliance measures, including training for managers and human resources staff, to ensure ongoing adherence to the order.

In light of this development, employers should continue to ensure that existing non-competes, and any new non-competes, are reasonably tailored in scope and duration, and justified for each employee. Key takeaways:

- **Geographic Scope:** As highlighted in Chair Ferguson's statement accompanying the action, he found that the nationwide non-compete (except California) to be geographically overbroad. Employers should take note and assess whether each local area have some justified use of non-competes.
- **Job Type:** Chair Ferguson's statement signals that the FTC may be more focused on non-competes targeting jobs requiring minimal training, such as truck drivers that pick up the animals, versus more highly skilled workers that require significant training, such as crematory services. A non-compete targeting these higher-skilled roles may be lawful.

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**C L I F F O R D**  
**C H A N C E**

Employers are strongly encouraged to review their current use of non-compete agreements, especially for roles that do not involve access to sensitive information or client relationships. Restrictive covenants should be narrowly tailored and demonstrably necessary to protect legitimate business interests. Employers may wish to consider less restrictive alternatives, such as confidentiality and non-solicitation agreements, to safeguard proprietary information without running afoul of regulatory scrutiny.

It remains important to pay attention to state law as many states also have their own laws governing the legality of non-compete agreements. California, North Dakota, and Oklahoma have had near-complete bans on non-competes since the 19th century, and Minnesota recently prohibited nearly all new non-competes as of July 1, 2023.

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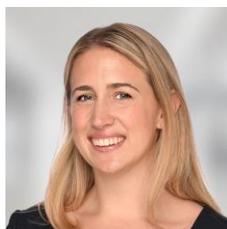
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