



The FTC Abandons Its Non-Compete Ban — Or Did It?

In April 2024 the Federal Trade Commission (“FTC”), under the Biden administration voted to ban most new and existing non-compete clauses nationwide. Prior to the date the rule was to become effective, a Texas Federal Court in a case brought by the tax services firm Ryan, LLC, set aside the ban asserting that the rule was arbitrary and capricious. In a separate challenge, a Florida Federal Court, in an action brought by Properties of the Villages Inc., a retirement community company, issued an injunction against the rule concluding that the FTC was unable to express any congressional intent authorizing it to enact a rule with such sweeping economic effect. The Biden administration filed appeals in both cases. With the change in administration and subsequent change in FTC leadership, the FTC determined to abandon both appeals and in a statement issued by the new Commissioner of the FTC on September 5, 2025, the FTC vacated the ban proclaiming it to be “substantively overbroad and an ill advised use of Commission resources”.

Instead, the Commissioner’s statement confirms, among other things, the recognition that non-competes have a legitimate place in protecting investments made by businesses in their workforce, while also recognizing that they can create unreasonable barriers to worker mobility. The Commissioner’s statement also highlighted that there are established standards used to evaluate whether non-competes are legitimate restrictions, illegal restraints on trade or otherwise constitute unfair methods of competition with adverse economic consequences. With the understanding that non-competes are neither wholly benign nor wholly evil, the Commissioner also confirmed that the FTC will evaluate violations of law in accordance with those standards and will consider a list of factors including but not limited to availability of less restrictive alternatives, duration of more than one or two years, a geographic scope that exceeds the boundaries of the employer’s operations, market power, etc.

Physicians and other healthcare practitioners have long been subjected to non-compete provisions in their employment and other agreements. Likewise staffing agency contracts usually contain non-competes between the agency and the skilled “talent” as well as between the agency and the clients for whom these agencies provide temporary or permanent healthcare workforce. Notwithstanding the vacatur of the ban, the FTC remains concerned about the imposition of non-compete provisions in the healthcare sector, particularly in rural areas. As a result, on September 10, 2025 the FTC sent warning letters to several unnamed large healthcare employers and staffing firms encouraging them to conduct a review of their employment agreements to ensure that their non-compete provisions comply with the law and are “appropriately tailored to the circumstances”. See FTC Template Warning Letter.

Even if your health system or staffing agency has not received such a letter from the FTC, it would be a good idea for every health system and staffing agency to take inventory of the non-compete provisions in their employment agreements. In doing so, they should consider any unreasonable limitations on vital roles in rural areas and other underserved areas where health care services are already scarce. Overly broad geographic and temporal restrictions should also be considered in the context of restrictions that should be narrowly tailored to achieve the purpose of the non-compete. Staffing agencies need to consider not only the non-competes in the agreements they sign with the people they place but also any potential non-solicitation provisions in their contracts with the clients they serve. In every case, health systems and staffing agencies need to consider whether the restrictions they have imposed are reasonable and compliant with all applicable laws and if a less restrictive alternative would provide them with the protections they need. In order to avoid investigations and enforcement action, it would behoove employers and staffing agencies to amend their non-compliant agreements before the FTC comes in. It does appear that this will be the next step.

Over many decades, the New York State Courts have issued a multitude of decisions regarding non-competes and the common law in New York essentially provides that non-competes may be upheld when they are reasonable in duration and in geographic scope and protects the legitimate business needs of the company. This is not a one-size-fits-all policy, but is one that is judged based on the circumstances. Public policy will also be taken into account under certain circumstances, such as where certain specialties are not adequately represented in a particular market. For parties who are already negotiating contracts with non-competes, it is important to recognize that these provisions are upheld by courts when they are reasonable. For those provisions that are deemed unreasonable, it seems that the FTC has not given up but will be more selective when pursuing health care employers whose non-competes create undue restrictions on the ability of health care workers to switch jobs and the ability of patients to access care with the provider of their choice. If you have any questions about your employment agreements or healthcare staffing agency agreements, please do not hesitate to contact us.

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