

Red Alert for Noncompetes: FTC Signals Continued Scrutiny of Restrictive Covenants With Launch of Joint Labor Task Force

Article By:

Christopher M. Pardo

Kevin Hahm

Elizabeth England

On February 26, 2025, the Federal Trade Commission (FTC) announced the launch of a Joint Labor Task Force to “prioritize rooting out and prosecuting unfair labor-market practices that harm American workers.” The announcement signals that the Republican-led FTC will continue the previous administration’s focus on anticompetitive labor practices, a shift from the party’s traditional pro-employer approach.

In a Directive issued along with the announcement, FTC Chair Andrew Ferguson instructed the Directors of the Bureaus of Competition, Consumer Protection, and Economics and the Office of Policy Planning to form a task force to coordinate investigations and enforcement actions and create information-sharing processes. The Directive emphasizes the FTC’s mandate to protect the American people in their role as workers, as well as their role as consumers, declaring that the FTC is “uniquely well-suited” to address harms workers face in the current labor market.

Although Chair Ferguson opposed the now-enjoined FTC rule barring most noncompete agreements, his recent statements indicate support for the use of the FTC’s enforcement authority to target noncompetes on a case-by-case basis. His dissent on the issuance of the noncompete rule was based on Constitutional grounds as he viewed the rule as going beyond the FTC’s statutory authority. However, he stated that the FTC will use the antitrust laws as a “scalpel” to prosecute specific noncompete agreements where appropriate. In a February 20 interview, Chair Ferguson laid out his priorities for the agency, including getting “our super talented enforcers at the FTC out there looking at noncompete agreements.”^[1]

Labor Practices Subject to Scrutiny by the FTC

The Directive lists a broad range of practices that the FTC may investigate for potential antitrust and/or consumer protection violations, including:

-
- No-poach, non-solicitation, or no-hire agreements
 - Wage-fixing agreements
 - Noncompete agreements
 - Labor-contract termination penalties
 - Labor market monopsonies, where a business uses anticompetitive methods to create or maintain significant buyer power in a market for labor
 - Collusion or unlawful coordination on DEI metrics, which the Directive states “may have the effect of diminishing labor competition by excluding certain workers from markets, or students from professional-training schools, on the basis of race, sex, or sexual orientation”
 - Harming gig economy workers through unfair or deceptive trade practices
 - Deceptive job advertising, including “job postings that lure potential employees with false promises regarding important issues like rates of pay or benefits”
 - Deceptive business opportunities, which “lure Americans into buying a business on the basis of false or misleading representations about the value and potential earnings of the business”
 - Misleading franchise offerings
 - Harmful occupational licensing requirements, “where employers or professional associations advance or promote needless occupational licensing restrictions that can serve as an unwarranted barrier to entry and reduce labor mobility”
 - Job scams, “including fraudulent job placement scams and online “task scams,” that lure job seekers to complete small online tasks but instead trick consumers into paying money that is never recovered”

Notably for employers, the Biden FTC targeted some of the same labor practices, including no-poach, no-hire, non-solicitation, and wage fixing agreements, as reflected in the FTC and Department of Justice’s (DOJ) joint [Antitrust Guidelines for Business Activities Affecting Workers](#), issued just before the change in administration.

The FTC is already acting on this directive as, on the same day it announced the Joint Task Force, the FTC voted unanimously to approve a consent order that requires building services contractor Planned Building Services and its affiliated companies to cease their enforcement of no-hire agreements. The no-hire agreements, which were included in customer service agreements with building owners, limited residential and commercial building owners from hiring building service workers that were employed by Planned Building Services.

The focus on “collusion or unlawful coordination on DEI metrics” is the most notable departure from past enforcement priorities. Chair Ferguson has been a vocal supporter of President Trump’s anti-DEI executive orders, calling DEI a “scourge on our institutions.”[2] Under the Biden Administration, the FTC treated race discrimination as an unfair trade practice that violates Section 5 of the FTC Act, it remains unclear whether the FTC will now use its Section 5 authority to target companies actively engaging in DEI initiatives.

Future of the FTC’s Noncompete Ban

As noted above, the Biden administration’s FTC rule that would have banned nearly all noncompete agreements was enjoined by a Texas federal court before taking effect. The FTC appealed that ruling before the change of administration.

In a fireside chat with Harvard Law Professor Adrian Vermuele on February 8, 2025, Ferguson stated his belief that the FTC should reconsider its defense of the rule. Mark Meador, President Trump’s nominee for the fifth Commissioner seat on the FTC, has also indicated that the FTC will likely

abandon the noncompete rule.

Consistent with those statements, on March 8, the FTC filed a motion to hold the appeal in *Ryan v. FTC* in abeyance for 120 days. That said, it has not announced that it will abandon the noncompete rule yet, so the situation remains in flux.

Takeaways

The launch of the Task Force signals that the FTC will continue to scrutinize labor practices under the new administration, but through targeted enforcement rather than rulemaking. The FTC's enforcement approach will become clearer after the Senate confirms Meador as the fifth Commissioner, ending the deadlock and creating a Republican majority. The Senate Committee on Commerce, Science, and Transportation voted to approve Meador's nomination on Wednesday, March 12, 2025.

Although the noncompete rule faces a grim future, Chair Ferguson has made clear that the FTC will use its enforcement authority to target noncompete agreements in every sector. Gail Slater, who was confirmed as the Assistant Attorney General of the DOJ's Antitrust Division on Tuesday, March 11, has also expressed concern about the growing use of noncompete agreements, suggesting that the DOJ will also be scrutinizing such agreements in the coming years.

As such, employers should promptly evaluate their restrictive covenant agreements with counsel to ensure that they are justified by legitimate, procompetitive business reasons.

[1] Video: [FTC Chair Andrew Ferguson shares his first order of business as head of agency](#), *Fox Business*

[2] [FTC Chairman Ferguson Announces that DEI is Over at the FTC](#), Federal Trade Commission

Copyright © 2025, Hunton Andrews Kurth LLP. All Rights Reserved.

National Law Review, Volume XV, Number 76

Source URL: <https://natlawreview.com/article/red-alert-noncompetes-ftc-signals-continued-scrutiny-restrictive-covenants-launch>