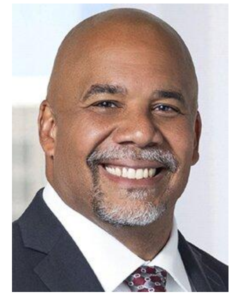
Employer Considerations After FTC's Noncompete Warning

By **Christopher Pickett** (April 17, 2026)



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During the Federal Trade Commission's Jan. 27 workshop, titled "Moving Forward: Protecting Workers from Anticompetitive Non-compete Agreements," Chairman Andrew Ferguson delivered a clear and consequential message: Employers who rely on broad or poorly tailored noncompete agreements should prepare for increased regulatory scrutiny and enforcement risk.

Although current FTC leadership has stepped back from its 2024 nationwide ban effort, Ferguson emphasized that the agency remains committed to challenging noncompetes that operate as restraints of trade. His remarks outline a framework that places significant compliance burdens and strategic risks on employers across industries.

Ferguson's Core Message: Employers Must Justify Noncompetes — Individually

Ferguson underscored a return to traditional legal principles: Noncompetes are not lawful merely because they are industry standard. Instead, employers must demonstrate that any restriction:

- Protects a legitimate, pro-competitive business interest;
- Uses narrowly tailored terms; and
- Cannot be achieved through less restrictive measures, such as nondisclosure or customer nonsolicitation agreements.

Ferguson warned that blanket agreements, boilerplate language and outdated templates are insufficient. Instead, each noncompete must be defensible on its own merit, based on the employee's role, the sensitivity of the information and the competitive context.

For employers, this marks a shift from general permissibility to individualized scrutiny and increased accountability for every agreement issued.

Enforcement Risk for Employers: The FTC Will Target Restrictions That Restrain Labor Markets

Ferguson's call for case-by-case enforcement signals a deliberate strategy: Rather than regulate through sweeping rulemaking, the FTC will pursue employers whose noncompete practices appear anticompetitive, especially when they:

- Limit employee mobility without a legitimate justification;
- Suppress wages or discourage employees from changing jobs;
- Block a competitor's ability to enter or grow in a market; and

- Bind workers whose duties do not meaningfully involve trade secrets or competitive strategy.

From an employer's perspective, even if a noncompete is enforceable under state law, it may still trigger federal scrutiny if its practical effect is to distort competition in labor markets.

Compliance Implications: Employers Should Reassess Contracting Practices

Based on Ferguson's remarks, employers face several immediate implications.

Heightened Review of Existing Noncompetes

Regulators — and potentially courts — may evaluate whether agreements reflect:

- Tailored temporal and geographic scope;
- A defensible business purpose;
- A reasonable duration; and
- Consideration of less restrictive alternatives.

Older, standardized or broadly drafted agreements will present the greatest exposure to employers.

Elevated Risk in Certain Industries

Ferguson and other panelists highlighted particular concerns in healthcare, veterinary services, personal services and skilled trades — industries already affected by worker scarcity and high mobility. Employers in these industries face a higher likelihood of FTC complaints or investigations.

Increased Likelihood of Worker Challenges

The FTC is actively soliciting noncompete complaints. Employers should expect more challenges to agreements and be ready to defend the business necessity of each.

Reputational and Workforce Consequences

Ferguson noted that noncompetes can backfire by generating worker dissatisfaction and reducing internal mobility. Employers may experience higher attrition, smaller recruitment pools, and damage to employer reputation in local labor markets.

Strategic Risk: Noncompetes Can Backfire and Become Antitrust Evidence

Ferguson cautioned that misuse of noncompetes can elevate a routine employment matter into an antitrust problem, particularly when agreements appear designed to: prevent workers from joining competitors; limit competitor growth by restricting access to talent; and maintain market share through labor restrictions rather than performance.

In such cases, the FTC may view the restrictions as an unreasonable restraint of trade, exposing employers to significant regulatory and legal consequences. This is especially significant for employers that use noncompetes as a default defensive measure, a practice Ferguson suggested may itself be anticompetitive.

Bottom Line for Employers: Narrow, Justified, Documented — or At Risk

Ferguson's remarks make clear that the FTC is creating an enforcement environment in which employers — not regulators — bear the burden of proving that each noncompete is necessary, narrowly tailored and lawful.

Moreover, as demonstrated by Washington state's recent enactment of a sweeping ban on most noncompetes, employers should immediately begin taking proactive steps to protect their business relationships and confidential information in a legal landscape that is increasingly hostile to noncompetition covenants.

Accordingly, employers should promptly take the following five practical steps.

1. Audit existing employment agreements.

Confirm the language used in postemployment obligations. Where agreements contain noncompete provisions, assess whether the restriction is necessary for the affected class of employees. Ensure the language is enforceable in the jurisdictions where employees are located, and revise any overbroad language as needed.

2. Be prepared to retire unjustified noncompetes.

Certain noncompete provisions for roles, or job classes where business justification is weak or absent, may need to be eliminated and replaced with a less restrictive provision that can protect company confidential information or customer relationships.

3. Narrow restrictions where business justification exists.

For roles and job classes where strong business justification supports the use of noncompetition provisions, employers should revise those provisions to narrow the restrictions. Employers may also consider replacing the noncompetition provision with customer nonsolicitation provisions, nondisclosure provisions, garden leave provisions or notice provisions, all of which are generally enforceable and can protect legitimate protectible interests.

4. Create processes for ongoing review.

Employers should regularly review and update employment agreements with particular focus on ensuring that those job classes and roles continue to justify the use of noncompetition provisions.

5. Train HR and management teams.

Employers should conduct regular training with HR and management teams regarding the FTC's enforcement posture and ongoing changes in state law governing enforceability of noncompetition provisions to reduce the risk of FTC and/or state attorney general enforcement actions.

Conclusion

The FTC and the states are signaling that noncompete use is no longer "business as usual." Employers who continue to rely on broad or outdated agreements without analysis confirming a strong justification for their use may find themselves squarely in the regulator's sights.

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