

Insights

## THE FTC NON-COMPETE RULE IS OFFICIALLY RESCINDED - WHAT EMPLOYERS NEED TO KNOW

Sep 11, 2025

Last week, in a 3-1 vote, the Federal Trade Commission (“FTC”) formally withdrew its notice of appeal in *Ryan, LLC v. FTC*, and with that, officially rescinded the Non-Compete Clause Rule (the “Rule”) it issued last summer which purported to render unlawful almost all non-competition restrictions in employment agreements. Put simply, the FTC Non-Compete Rule is officially dead letter. However, the demise of the Rule ironically could *raise* enforcement risk, with the current FTC Chairman promising a wave of “warning letters” to unspecified businesses “urging them to consider abandoning [non-compete] agreements as the Commission prepares investigations and enforcement actions.”<sup>[1]</sup>

BCLP previously discussed the adoption of the Rule in April 2024. BCLP also reviewed the decision by the U.S. District Court for the Western District of Texas to enjoin the Rule nationwide in July 2024. The Rule has been effectively paused since then, but the Biden FTC appealed the injunction issued by the District Court, and that appeal has remained pending for months.

In a statement officially withdrawing that appeal, and effectively repealing the Rule, Chairman Andrew Ferguson and Commissioner Melissa Holyoak reiterated their longstanding view that the FTC lacked authority to adopt a nationwide ban on non-compete agreements.<sup>[2]</sup> Ferguson, who had characterized the Rule as “unlawful six ways from Sunday,” emphasized that the agency would redirect its focus from rulemaking to case-by-case enforcement actions under existing antitrust authority instead of broad rulemaking.<sup>[3]</sup>

Despite the end of the Rule, a majority of the current Commissioners all reiterated their belief that non-competes are worthy of further enforcement scrutiny. Chairman Ferguson and Commissioner Holyoak flagged a recent complaint filed against Gateway Pet Memorial Services as an example of the FTC “mov[ing] aggressively against unlawful non-competes.”<sup>[4]</sup> Similarly, in a concurring statement, Commissioner Mark Meador identified several enforcement priorities, including non-competes with low-wage workers, unfair restrictions on independent contractors, or non-competes with overly broad geographic or functional scopes.<sup>[5]</sup> Commissioner Meador also noted that alternatives less restrictive than non-competes—such as confidentiality agreements and trade secret protections—could achieve the same objectives without limiting employee mobility.<sup>[6]</sup>

As has been the case since the District Court’s injunction, there is no federal prohibition on non-compete agreements—and with the FTC’s latest statement, there will not be one any time soon. Nonetheless, employers should anticipate that the FTC will likely pursue “aggressive” enforcement actions against agreements it views as particularly restrictive or an unfair restraint of trade for anti-competitive purposes. Moreover, state law on this topic is ever-changing: Minnesota recently enacted a near-total ban on non-compete clauses in employment agreements, and legislatures across the country consider new restrictions every legislative session. In this dynamic environment, companies should review the restrictive covenants in their employment and other agreements to ensure enforceability.

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[1] Statement of Chairman Andrew N. Ferguson, Joined by Comm’r Melissa Holyoak, *Ryan, LLC v. FTC*, at 1 (Sept. 5, 2025) (“Ferguson *Ryan* Statement”).

[2] *Id.*

[3] *Id.* at 3.

[4] *Id.* at 3 (discussing *In re Gateway Pet Memorial Servs.*, Matter No. 2210170).

[5] Concurring Statement of Comm’r Mark. R. Meador, *In the Matter of Non-Compete Clauses*, Matter No. P201200, at 4-5 (Sept. 5, 2025).

[6] *Id.* at 3.

Thanks to Callie Kutasi (Law Clerk II) for her contributions to this insight.

## RELATED CAPABILITIES

- Employment & Labor
- Non-Compete, Trade Secret & Employee Unfair Competition

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