

Noncompete Agreements Are Still a Target of Federal Antitrust Scrutiny

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On April 15, 2026, the Federal Trade Commission (FTC) ordered a prominent pest control company to cease enforcing its noncompete agreements nationwide. The complaint alleged, under Section 5 of the Federal Trade Commission Act (but not the Sherman Act), that the company had engaged in “unfair methods of competition” by prohibiting its pest control technicians and customer service representatives from working in the pest control industry for two years after their employment concluded and within a 75-mile radius of any company location.

This is not the first time the FTC has used its Section 5 authority, which can apply more broadly than the Sherman Act, to challenge noncompetes on a case-by-case basis. In conjunction with the pest-control case, the FTC sent a letter to other companies in the pest-control industry warning them of anticompetitive noncompetes and encouraging them to revisit any noncompetes that are “not reasonably necessary to achieve procompetitive aims.” In recent memory, the FTC has also challenged noncompetes in industries as varied as pet cremation, building services, security services, and container manufacturing, and has sent letters to healthcare companies asking them to review their noncompetes for compliance with the antitrust laws.

In short, the FTC continues to focus significant resources on noncompetes, even after dropping its proposed nationwide ban on noncompetes last year. In February 2025, FTC Chairman Andrew Ferguson stated during a panel discussion on noncompetes, “an agreement not to compete is quite literally an agreement not to do the thing the Sherman Act requires us to do, which is to compete against each other.” He also expressed his opinion that anticompetitive noncompetes have been “wildly unenforced basically for the entire existence of the antitrust laws.”

FTC Commissioner Mark Meador, the only other currently serving FTC commissioner, holds similar views on the commission’s role in policing noncompetes. In a September 2025 statement, he wrote that noncompetes “can create barriers to entry, restrict worker mobility, and suppress wages in ways that harm competition and workers.” As a result, he said: “I fully support rigorous enforcement against noncompete agreements under both Sections 1 and 2 of the Sherman Act and Section 5 of the FTC Act when the commission has reason to believe the law is violated.”

The FTC has substantial tools at its disposal in dealing with noncompetes. Section 5 of the Federal Trade Commission Act applies broadly, providing the FTC with an injunctive relief remedy: “Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.” And Ferguson reminded the public in February 2025 that the Sherman Act, with its treble damages remedy, applies to noncompetes just as it does to price fixing and other, more traditional anticompetitive conduct: “As chairman of the FTC, I absolutely intend to bring Sherman Act Section 1 cases in noncompetes where the evidence shows that it actually diminishes competition.” Both laws give the FTC substantial discretion in deciding whether noncompetes are anticompetitive, with Section 5 of the FTC Act vaguely prohibiting “unfair methods of competition” and arguably providing a larger enforcement sword.

The Department of Justice’s Antitrust Division also continues to be interested in noncompetes. In January 2025, the Antitrust Division and the FTC issued Antitrust Guidelines for Business Activities Affecting Workers in which they explained: “Noncompete clauses that restrict workers from switching jobs or starting a competing business can violate the antitrust laws.” Further, in 2020, the DOJ Antitrust Division required a health care company, as part of a deferred prosecution agreement, to waive and not enforce noncompete agreements with current and former employees.

So, what features of noncompetes are likely to pique FTC and DOJ interest these days. Their substantial discretion necessarily means they consider many factors, but recent FTC enforcement actions have highlighted several types of noncompetes as priorities:

- First, noncompetes that are broadly applied across an organization—or even an entire industry—without regard for various employees’ positions, job responsibilities and access to competitively sensitive information. It is no secret that the FTC disfavors one-size-fits-all noncompetes, and this approach to employment agreements is likely to catch the FTC’s attention.
- Second, noncompetes that are applied as a matter of course to lower-wage employees. This is particularly true where a noncompete lacks any form of compensation in exchange for the noncompete’s restrictions or where the noncompete is presented as a take-it-or-leave-it proposition to current employees.

- Third, noncompetes that are not tailored to specific harm that may befall the organization if the employee leaves to join a competitor or start their own business. The FTC is more receptive to an organization's need to protect trade secrets and other confidential business information, as well as to preserve investment in employee training. But noncompetes must be narrowly tailored to their intended purpose. For example, the FTC has been more hostile to noncompetes designed to protect confidential information where a non-solicitation clause would adequately serve that same purpose.
- Fourth, noncompetes that have pass-through effects on competition in the organization's product or service markets, especially in concentrated industries. In the FTC's pest-control complaint, it alleged: "The challenged noncompete agreements have also suppressed competition by preventing the entry and expansion of ... competitors, while also discouraging ... employees from starting new businesses that could compete in the pest-control industry."

After the FTC voted in September 2025 to abandon its proposed blanket noncompete rule, there may have been skepticism about the commission's interest in continuing to prosecute noncompete agreements on a case-by-case basis. There should no longer be any doubt. The presently constituted FTC is firmly committed to the idea that noncompetes are an antitrust issue, and noncompetes are no longer primarily the concern of state attorneys general applying state law. Be warned and stay tuned.

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