

## **FACT SHEET: FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition**

### **Background**

**On January 5, 2023, the Federal Trade Commission released a [Notice of Proposed Rulemaking \(NPRM\)](#) to prohibit employers from imposing noncompete clauses on workers.** True to their name, noncompetes block people from working for a competing employer, or starting a competing business, after their employment ends. Evidence shows that noncompete clauses bind about one in five American workers, approximately 30 million people. By preventing workers across the labor force from pursuing better opportunities that offer higher pay or better working conditions, and by preventing employers from hiring qualified workers bound by these contracts, noncompetes hurt workers and harm competition.

**Noncompete clauses significantly reduce workers' wages.** When employers use noncompete clauses to restrict workers from moving freely, they have the power to suppress wages and avoid having to compete to attract workers. Based on existing evidence, noncompete clauses also reduce the wages of workers who aren't subject to noncompetes by preventing jobs from opening in their industry. According to FTC estimates, the proposed rule could increase workers' earnings across industries and job levels by \$250 billion to \$296 billion per year. [Researchers](#) also find that banning noncompetes nationwide would close racial and gender wage gaps by 3.6-9.1 percent.

**Noncompete clauses stifle new businesses and new ideas.** Existing evidence shows that noncompete clauses hinder innovation in several ways—from preventing would-be entrepreneurs from forming new businesses, to inhibiting workers from bringing innovative ideas to new companies. In markets with fewer new entrants and greater concentration, consumers face higher prices—as seen in the health care sector.

**Noncompete clauses can exploit workers and hinder economic liberty.** Workers often have less bargaining power than their employer. In many cases, noncompete clauses are take-it-or-leave-it contracts that exploit workers' lack of bargaining power and coerce workers into staying in jobs they would rather leave. To varying degrees, each state restricts employers' ability to enforce noncompete clauses due to concerns that they harm workers and threaten a person's ability to practice their trade.

**Employers have other ways to protect trade secrets and other valuable investments that are significantly less harmful to workers and consumers.** Employers often justify using noncompetes with their workers to protect confidential information and to get the most out of their investments in training and capital. But the record to date shows that in California, North Dakota and Oklahoma—three states in which employers can't enforce noncompete clauses—industries that depend on trade secrets and other key investments have still flourished. This shows that employers have other ways of protecting these investments.

## **Proposed Rule on Noncompete Clauses**

Based on concerns about these harms to workers and to competition, the FTC has proposed a rule concerning noncompetes.

- The rule would provide that noncompete clauses are an unfair method of competition. As a result, the rule would ban employers from entering noncompete clauses with their workers, including independent contractors.
- The rule would require employers to rescind existing noncompete clauses with workers and actively inform their employees that the contracts are no longer in effect.
- In [the proposed rule](#), for which the agency invites comment, the FTC estimates that the rule would:
  - Increase workers' earnings by nearly \$300 billion per year
  - Save consumers up to \$148 billion annually on health care costs
  - Double the number of companies founded by a former worker in the same industry
- The proposed rule seeks public comment on a number of topics, in particular:
  - Whether franchisees should be covered by the rule
  - Whether senior executives should be exempted from the rule, or subject to a rebuttable presumption rather than a ban
  - Whether low- and high-wage workers should be treated differently under the rule

## **Examples of Noncompetes Harming Workers**

Noncompetes can restrict workers across the labor force—from minimum wage workers to senior executives. Public reporting reveals the way these restrictions can have real consequences for workers:

- Michael, a single father, found work as a security guard for a Florida firm. A few weeks after accepting the job, which paid around \$11 an hour, his overnight childcare fell through, and he resigned. Months later, he took a job as a daytime security guard at a bank making almost \$15 per hour. But, his new employer [let him go](#) when the previous employer sent a letter stating that Michael had signed a two-year noncompete.
- Gene, a vice president at Amazon who had signed a non-compete, left the company to serve as head of product for a tech startup, Smartsheet. Amazon [sued to block him](#) from taking the job. After unfavorable media coverage, [Amazon dropped the suit](#). Under the leadership of Gene and others, Smartsheet thrived and exceeded \$500 million in annual revenue. Gene left the firm in 2021 for a new startup.
- Keith, a factory manager for a textile company, saw his paycheck dry up after the 2008 financial crisis. A rival textile company offered him a better job and a big raise. A

noncompete [blocked him from taking it](#). Keith fought the noncompete, but the three-year legal battle wiped out his savings.

- A phlebotomist (a technician who draws blood for blood testing) drove long hours around upstate New York performing physical exams and collecting specimens. She was offered a job by a clinical lab that offered more regular hours, higher pay, and no travel requirements, but [the offer was rescinded](#) when the company discovered she was subject to a noncompete.

### **The FTC's Focus on Labor Issues in Antitrust Work**

The [Treasury Department's 2022 report](#) highlights several ways in which a lack of labor market competition harms workers, noting how employers' ability to restrict worker mobility can decrease wages, reduce benefits, and worsen working conditions. As such, promoting fair competition in labor markets is a [key priority](#) for the Commission. This NPRM builds from other recent accomplishments and makes progress on that goal.

#### **Other Key Actions on Labor Issues:**

- In November 2022, the FTC recently released a [policy statement](#) to reinvigorate Section 5 of the FTC Act, which bans unfair methods of competition, explicitly noting that the Commission is obligated to protect workers from unfair methods of competition.
- The FTC recently announced [two actions](#) against companies and their executives for imposing noncompete restrictions on their workers that violate Section 5 of the FTC Act.
  - The FTC took action against Prudential, a Michigan-based security guard company, and its two owners, alleging that the company's use of noncompetes against its workers was coercive, exploitative, and tended to negatively affect competitive conditions. The FTC's order requires Prudential to terminate its noncompetes with all the security guards it had hired and actively notify the workers that these noncompetes are now void.
  - The FTC's actions against Owens-Illinois and Ardagh target the use of noncompetes by dominant firms in the highly concentrated glass manufacturing sector. In the complaints, the FTC alleged that the companies' use of noncompetes locked up highly specialized workers, tending to impede the entry and expansion of rivals by depriving them of access to qualified employees. The relief secured by the FTC prohibits the firms from imposing and enforcing noncompetes with workers and requires firms to inform workers that these noncompetes are now void.

- The FTC has built an expertise on noncompetes through years of policy analysis and public engagement, including agency workshops in [2020](#) and [2021](#) examining noncompetes and labor market competition.
- The Commission has also challenged noncompete restrictions in connection with mergers reviewed by the agency:
  - In November 2021, the Commission approved a [final order](#) settling charges that 7-Eleven's acquisition of Marathon Petroleum Corporation's Speedway subsidiary violated federal antitrust laws. Among other things, the order prohibits 7-Eleven from enforcing noncompetes against any franchisees or employees working or doing business with a divested asset.
  - In January 2022, the Commission approved a [final order](#) imposing strict limits on future mergers by DaVita, a dialysis service provider with a history of fueling consolidation in life-saving health industries. As part of the order, DaVita was prohibited from entering into or enforcing noncompete agreements and other employee restrictions.
- In January 2022, the FTC and the Justice Department's Antitrust Division launched a joint public inquiry aimed at [strengthening enforcement against illegal mergers](#), including better understanding the labor market effects of mergers.
- In September 2022, the FTC released a [policy statement](#) outlining areas where the agency will act to protect gig workers from unfair, deceptive, and anticompetitive practices.
- In July 2022, the FTC and the National Labor Relations Board established a [memorandum of understanding](#) between the two agencies outlining the ways they will work together to address labor market concentration, one-sided contract terms, and labor developments in the "gig economy."