

FTC Maintains Stance on Noncompetes Whether Under Trump or Biden

The FTC, in the Trump era, is wary of noncompetes it views as extreme, or those targeting lower-wage workers. But it sees a role for noncompetes for executives and others who have access to trade secrets or specialized training.

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Justin Beyer of Saul Ewing (left) and Jay Sabin of Brach Eichler. Courtesy photos

A surprise to emerge from the Federal Trade Commission's order directing Georgia-based Rollins Inc., the parent of Orkin and other pest control providers, to stop enforcing noncompete agreements on its 18,000 employees is that the principles behind the Trump administration's view on measures restricting workplace mobility are not so far from those of the Biden administration.

After the Biden administration enacted a sweeping ban on noncompetes, the Trump administration dropped the government's appeal of a ruling calling that policy unlawful.

But the Trump FTC says it will still work to unravel what it sees as unreasonable noncompetes on a case-by-case basis.

The Trump FTC appears prepared to challenge noncompetes it views as extreme, or those targeting lower-wage workers. But it sees a role for noncompetes for executives and others who have access to trade secrets or specialized training.

Under the Trump FTC, reasonableness—rather than categorical bans—is key.

"What's fascinating about noncompetes is that there are branches of both political parties that are against them, and in general, public sentiment is against noncompetes. So while the FTC under the Biden administration took one approach toward prohibiting noncompetes, the Trump administration, while they're taking a different approach, it's still an approach of seeking to prohibit the broad use of

non competes," said Jay Sabin, a labor and employment lawyer at Brach Eichler in Roseland, New Jersey.

"If I was a political scientist, I might say this is a populist sentiment—not trying to tie the working person down to one organization, allow the working person to enter the marketplace and use his or her leverage to get the best job for the best price. And that populist sentiment today, in 2026, manifests itself in both political parties," Sabin added.

The FTC ordered Rollins, based in Atlanta, to stop enforcing existing noncompete agreements for its employees.

The company's noncompete agreements prohibited employees from working in pest control within a predetermined distance, typically within a 75-mile radius from one of Rollins' more than 700 locations in the U.S.

The FTC found Rollins' noncompetes hinder employee mobility and wage and job growth and limit small business formation.

Besides ordering the company to undergo compliance monitoring for five years, the FTC sent warning letters to 13 other pest-control companies it did not identify, urging them to review their employment agreements for noncompete provisions that the agency said might carry similar harms.

The agency's decision to block Rollins from enforcing or entering into most employee noncompete agreements serves as a warning to other companies that still rely on broad, boilerplate restrictions across large portions of their workforce, said Justin Beyer, a Saul Ewing partner in Chicago who specializes in trade secret and noncompete disputes.

Beyer said the action should get the attention of companies in manufacturing, healthcare, transportation, pharmaceuticals, construction, agriculture, real estate and other industries that commonly use restrictive covenants.

The action also signals that, even after the FTC's nationwide noncompete ban was struck down, regulators are not walking away from the issue but shifting to a company-by-company approach that could create serious consequences for employers who overreach, Beyer said.

The Rollins case indicates the FTC looked askance at the broad application of noncompetes to people who spray for bugs and earn relatively low wages, and the wide, 75-mile radius that applies to employees, Beyer said.

Employers that impose noncompetes too broadly, when a less-restrictive approach would work, could find themselves under the FTC's scrutiny, he said.

"The FTC has signaled that, whether it was the Biden administration or Trump administration, that their view of this is that there's no restriction on confidentiality agreements. There's no restriction on non-solicitation," Beyer said.

A handful of employers are adamant that they can't hire employees without a noncompete, and in other cases employers merely have a noncompete requirement that's been in effect for years and hasn't been examined, Beyer said. Still, the role for noncompete clauses is getting smaller, Beyer said.

"There are so many factors involved, between the way the economy has shifted through the years, the number of significant economic events that we've seen in the last 25 years. I don't think courts

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are looking at them the same way. I don't think states are looking at them the same way. And I think that you'll continue to see an evolution as to how noncompetes are utilized, and where they're utilizing them and who gets to utilize them," Beyer said.

Meanwhile, Sabin added that regulatory and legislative activity limiting the use of non compete is likely to continue.

"I don't see the FTC promulgating across the board regulation, but I do foresee local and state bodies, legislative bodies and regulatory bodies prohibiting non competes in one fashion or another, and that's because the general public sentiment is against non competes. Each business has to assess its own interests and how and whether or not can be narrowly targeted to protect that interest," Sabin said.

For example, an organization can distribute ownership equity interest to employees and have as a noncompete provision for that equity interest. That's generally enforceable," Sabin said.

"A business that's involved in a corporate transaction, for example, selling itself or buying another business, can generally require noncompetes from people involved in the transaction. So there are paths forward to protect business interests," Sabin said. "What this enforcement matter highlights, however, is that a less well-thought-out, across-the-board approach will likely not be enforceable."