

PUBLICATION

FTC Signals Focus on Health Care Non-Competes

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The Federal Trade Commission (FTC)'s September 5 announcement that it will formally withdraw its defense of its Non-compete Rule does *not* signal reduced focus on non-compete agreements. In fact, recent actions suggest the FTC is intensifying its scrutiny – particularly in the health care sector, but with potential implications for all employers.

In a September 10 [statement](#), the FTC announced that Chair Andrew Ferguson had sent letters to "several" large health care employers, urging them to review their existing non-compete and restrictive covenant agreements. The template letter accompanying the announcement addresses the unique staffing issues facing health care employers.

"Available information suggests that many healthcare employers and staffing companies include non-compete agreements (non-competes) in employment contracts that may unreasonably limit employment options for vital roles like nurses, physicians, and other medical professionals. Non-competes may have particularly harmful effects in healthcare markets where they can restrict patients' choices of who provides their medical care – including, critically, in rural areas where medical services are already stretched thin."

The letters conclude by encouraging employers "to conduct a comprehensive review of your employment agreements – including any non-competes or other restrictive covenants – to ensure that they comply with applicable laws and are appropriately tailored to the circumstances."

The FTC initiative aligns with multiple state statutes that specifically regulate restrictive covenants for health care workers, as well as broader legal trends that scrutinize the legitimate business interest in limiting health care worker mobility. These laws may include wage-based restrictions, required notice periods, or outright bans.

Why All Employers Should Take Notice

Although the current set of letters was directed at health care employers, the FTC's message is broader. The September 10 announcement included a statement from Kelse Moen, Deputy Director of the Bureau of Competition and co-chair of the FTC's Joint Labor Task Force:

"We strongly encourage all employers – not just those receiving letters today – to review their contracts closely, to ensure that any restrictions on employee mobility are in full compliance with the law."

Emphasizing the FTC's focus on labor market fairness, the announcement also referenced its Proposed Consent Order against Gateway Services, Inc., which ordered the company to cease enforcement of all existing non-compete agreements affecting approximately 1,800 employees in the pet cremation industry.

What Can Employers Do Now?

Regardless of whether your organization received a letter from the FTC, any employer using restrictive covenants in its employee agreements should proactively review their provisions with counsel. Key considerations should include:

- **State Law Compliance:** Do your agreements comply with the most current laws in every state where you operate? An agreement that is valid in one state may be unlawful or outdated in another state.
- **Business Justification:** Are the right agreements in place for the right roles in your organization? Not every employee – based on title, compensation, duties, or other factors – should be subject to the same restrictions. Overly broad use may be viewed as anticompetitive.
- **Beyond Non-competes:** Are there other compliance concerns with your existing agreements? The FTC has shown interest in other restrictive provisions, including those that limit solicitation of other employees.

Stay Informed

Baker Donelson will continue to monitor developments around the regulation of non-compete agreements. If you have questions, please contact [Theresa Sprain](#), [Jennifer Curry](#), or a member of Baker Donelson's [Labor & Employment](#) team.