

The Current Status of Non-Compete Agreements and What All Business Owners Should Know

3 Dec 2025

[Don Kim](#)

On September 5, 2025, the Federal Trade Commission ended its multi-year effort to implement a nationwide ban on non-compete agreements. Although the proposed nationwide ban is, at least for now, no longer a threat, non-compete agreements remain subject to Section 5 of the FTC Act, as well as to state statutes and common law. Despite this setback for the FTC, employers should be alert that non-compete agreements will be subject to heightened scrutiny at the federal level, and state legislatures have shown increasing interest in imposing additional restrictions on the use of such covenants. FTC Chairman Andrew N. Ferguson emphasized in his statement that the FTC will continue to pursue enforcement actions against “unlawful non-compete agreements” and that FTC intends to distribute warning letters encouraging businesses to reconsider overly broad non-compete provisions while the FTC prepares future investigations and enforcement actions.

Recent actions by the FTC evidences its intent to sustain this heightened level of scrutiny. On September 4, 2025, FTC filed a complaint against a national pet cremation company alleging a violation of Section 5 of the FTC Act based on its non-compete agreements with its employees. In addition, on September 10, 2025, just five days after the decision to abandon the nationwide ban, Chairman Ferguson sent letters to several large healthcare employers and staffing firms urging them to conduct a comprehensive review of their employment agreements to ensure they are appropriately tailored and comply with applicable law. In the letter, the FTC reiterated its authority under Section 5 to investigate unfair methods of competition. This authority includes the ability to scrutinize non-compete agreements that are unjustified, overly broad, or otherwise unfair or anticompetitive. These actions by the FTC, taken together, make clear that it is not done policing non-compete agreements. FTC may investigate or bring a claim asserting that a non-compete agreement violates Section 5 of the FTC Act as an unfair method of competition - even if the agreement is otherwise lawful under state law.

Many of our employer-clients operate in Maryland, Virginia, and the District of Columbia and employ individuals in one or more of these jurisdictions. Below are some examples of limitations on non-compete agreements in each of these jurisdictions. Employers should consult their attorneys to ensure their non-compete practices comply with applicable laws and are appropriately tailored to their operational needs.

DC

Some applicable qualifications include:

- For “highly compensated employees,” defined as employees who are reasonably expected to earn at least \$154,200 during a consecutive 12-month period or whose compensation met that threshold during the preceding 12-month period.
- For “medical specialists,” whose minimum compensation threshold is increased to \$257,000.
- For “covered employees” defined as an employee who spends more than 50% of their time working in D.C. or whose employment is based in D.C. and who regularly spends substantial time working in D.C. and less than 50% of their time working in a different jurisdiction.

For non-compete agreements between employers and highly compensated employees executed on or after October 1,

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2022, the duration of the non-compete cannot exceed:

- For employees who are not medical specialists, the non-compete period may not exceed 365 days from the date of separation.
- For medical specialists, the permitted duration increases to 730 days from the date of separation.

MD

Some applicable qualifications include:

- For employees who earn 150% or less of the state minimum wage.
- For employees who must be licensed under the Health Occupations Article, who provide direct patient care, and who earn more than \$350,000 annually. For these employees, a valid and enforceable non-compete may not exceed one year following the last day of employment, and it may not prevent the employee from working outside a ten-mile radius of the employer's place of business, regardless of where the agreement was executed.
- For employees licensed as veterinary practitioners or technicians.

VA

As a "right to work" jurisdiction, Virginia courts have historically strictly construed non-compete agreements. Some applicable qualifications/restrictions include:

- Prohibition against entering into non-compete agreements with employees classified as non-exempt under the Fair Labor Standards Act (FLSA)
- Prohibition against entering into non-compete agreements with "low-wage employees," defined as individuals who earn less than weekly average wage of the Commonwealth. This group has been expanded to include those employees who are entitled to overtime compensation under the FLSA for any hours worked in excess of 40 hours in a work week. This group often includes students, interns, apprentices, and trainees. The definition also excludes employees whose earnings consist predominantly or entirely of sales commissions, incentives, or bonuses.

Regardless of the state and whether its laws expressly permit non-competes or its less restrictive alternatives, such as non-disclosure agreements (NDAs) or non-solicitation agreements, these agreements should be reviewed to ensure they do not constitute a "functional noncompete", an important point in the FTC's efforts to implement a nationwide ban. The FTC has expressed concern about "functional noncompete" that may effectively function to prevent workers from seeking or accepting other work or starting a business after their employment ends. Thus, employers should review their employee agreements more broadly and prepare for the possibility that the FTC may seek to restrict these "functional noncompete" and traditional non-compete agreements in the future, particularly if there is a change in control of the legislative or executive branches of government

This alert is not intended to contain legal advice or to be an exhaustive review. If you have any questions about key concepts and terms, please contact John Matteo at jmatteo@jackscamp.com, or Don Kim at dkim@jackscamp.com.

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