

# Ban Noncompete Agreements Nationwide

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## Executive Summary

- Noncompete agreements are widespread in the American labor market, restricting workers' ability to accept new employment or start new ventures in the same field as their current employer. Some states ban or restrict the use and enforceability of noncompetes, but many do not, and even where they have no legal force, employees are often unaware of their rights.
- The proliferation of noncompetes chills entrepreneurship and innovation by restricting the flow of talent, and suppresses wages and worker power by preventing American workers from freely pursuing opportunities in the labor market.
- Congress should enact a nationwide ban on the use and enforceability of noncompetes. While legislation is pending, the Federal Trade Commission (FTC) should aggressively enforce existing legal standards against unreasonable and abusive noncompetes.

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## The Policy Question

Noncompete agreements, often required as a condition of accepting a job offer, legally prohibit a worker from working for another employer or starting their own business in the same field as their current employer, for a specified time and/or within a specified geographic area. The regulation of noncompete agreements varies widely from state to state, ranging from outright bans or severe restrictions to general permissiveness. The lack of national legislation on noncompetes, meanwhile, has led to significant vacillation in federal enforcement approaches as the FTC adopts divergent interpretations of its existing authority under successive administrations.

*Should federal law ban or restrict noncompete agreements in the American labor market?*



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## Why It Matters

Estimates vary: somewhere between one-in-five and one-half of American workers are subject to noncompete agreements.<sup>1</sup> Taking the lower estimate, over 30 million Americans are currently covered by a noncompete<sup>2</sup> and almost two-in-five have signed one at some point in their lives.<sup>3</sup> One national survey found that half of responding American businesses imposed noncompetes on at least one employee, and almost a third imposed one on all employees.<sup>4</sup> Noncompetes affect workers across the economic spectrum, including large numbers of hourly-wage workers as well as professionals.

The prevalence of noncompetes has major labor market effects. Restricting mobility in the labor market via noncompetes can depress wages and hinder innovation and entrepreneurship. Noncompetes affect labor markets even where they are technically unenforceable or entered into in contravention of state law, as workers are often unaware of their rights and merely an employer's threat of pursuing legal action can have a significant chilling effect on an employee's ability to seek more gainful employment or to leave a poor work environment.

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## State of Play

All 50 states regulate noncompetes in some manner. Four states (California, North Dakota, Minnesota, and Oklahoma) ban noncompete agreements entirely. Nine states and the District of Columbia place significant restrictions on their use, using income-based thresholds below which noncompetes are unlawful and unenforceable. Twenty-five additional states impose other statutory restrictions on noncompetes, for example, by imposing industry-specific bans or constraining their scope.<sup>5</sup> The remainder govern noncompetes according to the common law standard of "reasonableness," under which noncompetes are permitted but must impose the minimum burden necessary to achieve their legitimate purpose, not "impose undue hardship on the promisor," and not be "injurious to the public."<sup>6</sup> Proposals to further restrict noncompetes are pending in numerous states.

Congress has not enacted a national standard to replace this patchwork of state regulatory regimes, though lawmakers have introduced several proposals. The bipartisan *Workforce Mobility Act*, sponsored by Senators Chris Murphy (D-CT), Todd Young (R-IN), Kevin Cramer (R-ND), and Tim Kaine (D-VA), would ban noncompetes nationwide in almost all circumstances.<sup>7</sup> The bipartisan *Freedom to*

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- 1 See Donna S. Rothstein and Evan Starr, "[Noncompete agreements, bargaining, and wages: evidence from the National Longitudinal Survey of Youth 1997](#)," *Monthly Labor Review*, Bureau of Labor Statistics, June 2022; Evan Starr, J.J. Prescott, and Norman Bishara, "[Noncompete Agreements in the U.S. Labor Force](#)," *Journal of Law and Economics* 2021, October 2020; Alexander J.S. Colvin and Heidi Shierholz, "[Noncompete Agreements](#)," Economic Policy Institute, December 10, 2019.
  - 2 As of [December 2025](#) the U.S. civilian labor force is 168.3 million; 18% is 30.3 million. See
  - 3 Starr, Prescott, and Bishara, "Noncompete Agreements in the U.S. Labor Force."
  - 4 See Colvin and Shierholz, "Noncompete Agreements."
  - 5 See "[State Noncompete Law Tracker](#)," Economic Innovation Group, September 9, 2025.
  - 6 Kenneth G. Dau-Schmidt, Xiaohan Sun & Phillip J. Jones, "[The American Experience with Employee Noncompete Clauses: Constraints on Employees Flourish and Do Real Damage in the Land of Economic Liberty](#)," 42 *Comparative Labor Law and Policy Journal* 585 (2022).
  - 7 [S.2031 - Workforce Mobility Act of 2025](#), Congress.gov. See also "[Young, Murphy Reintroduce Legislation to Protect American Workers, Limit Non-Compete Clauses](#)," Press release, Office of Senator Todd Young, June 11, 2025.



*Compete Act*, sponsored by then-Senator Marco Rubio (R-FL) and Senator Maggie Hassan (D-NH), would ban noncompetes for lower-wage workers, while allowing them for higher-wage workers exempt from minimum wage and overtime pay protections under section 13(a)(1) of the *Fair Labor Standard Act*.<sup>8</sup> As conservatives have increasingly focused on the interests of ordinary workers, interest from Republicans in Congress has grown.<sup>9</sup>

During the Biden administration, the FTC under Chair Lina Khan sought to ban noncompete agreements nationwide. In April 2024, citing its rulemaking authority and statutory directive to “prevent the use of unfair methods of competition,”<sup>10</sup> the FTC issued a final rule that found noncompete agreements to be unfair methods of competition and, therefore, entering into or enforcing noncompetes to be unlawful.<sup>11</sup> This rule was enjoined from taking effect, and eventually vacated in August 2024 by the U.S. District Court for the Northern District of Texas in *Ryan LLC v. Federal Trade Commission*.<sup>12</sup>

The Trump-Vance FTC, under Chairman Andrew Ferguson, withdrew its appeals and acceded to the vacatur of the rule in September 2025.<sup>13</sup> This, however, has not signaled a return to the pre-Biden FTC status quo. Ferguson has repeatedly expressed the view that while noncompetes can be legitimate, they also can be and often are harmful to workers. Rather than seek a blanket rule, Ferguson’s preferred approach is to pursue case-by-case action against egregious instances of abusive and unreasonable noncompetes,<sup>14</sup> with the aim of producing “[a] steady stream of enforcement actions against an unlawful practice [that] provides the markets with transparency about what the agency believes the law requires.”<sup>15</sup>

Ferguson has written that the “rule of reason,” a core principle of American antitrust law, should guide the FTC’s enforcement of noncompetes.<sup>16</sup> In cases where a business practice or agreement that constrains competition is not per se unlawful, the rule of reason obligates courts to consider whether or not the practice or agreement’s restraints are reasonable. As Ferguson points out, “The first time a court ever deployed the rule of reason to assess the lawfulness of an agreement in restraint of trade was in *Mitchel v. Reynolds*, an English case [in 1711] involving a noncompete agreement.” Ferguson thus affirms the FTC’s authority with respect to noncompete agreements, by explaining that:

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- 8 [S.379 - Freedom To Compete Act of 2023](#), Congress.gov. See also “[Rubio Introduces Bill to Protect Low-Wage Workers from Non-Compete Agreements](#),” Press release, U.S. Senate Committee on Small Business and Entrepreneurship, January 15, 2019.
  - 9 See for example “Opening Statement of Hon. Marco Rubio, Chairman,” [Noncompete Agreements and American Workers: Hearing Before the U.S. Senate Committee on Small Business and Entrepreneurship](#), 116th Congress (November 14, 2019).
  - 10 Statement of Chair Lina M. Khan, Joined by Commissioner Rebecca Kelly Slaughter and Commissioner Alvaro M. Bedoya, Regarding the Non-Compete Clause Final Rule, Commission File No. P201200, December 31, 2024.
  - 11 [Federal Trade Commission Non-Compete Clause Final Rule](#), 16 CFR Part 910 (2024). See also “[FTC Announces Rule Banning Noncompetes](#),” Press release, Federal Trade Commission, April 23, 2024.
  - 12 [Ryan LLC v. Federal Trade Commission](#), No. 3:2024cv00986 - Document 211 (N.D. Tex. 2024).
  - 13 “[Federal Trade Commission Files to Accede to Vacatur of Non-Compete Clause Rule](#),” Press release, Federal Trade Commission, September 5, 2025
  - 14 See for example “[FTC Takes Action to Protect Workers from Noncompete Agreements](#),” Press release, Federal Trade Commission, September 4, 2025 and “[FTC Approves Final Order Prohibiting Noncompete Enforcement by Gateway Services](#),” Press release, Federal Trade Commission, November 26, 2025.
  - 15 Statement of Chairman Andrew N. Ferguson, Joined by Commissioner Melissa Holyoak, [In re Gateway Pet Memorial Servs.](#), Matter No. 2210170, September. 4, 2025. (“Ferguson Gateway Statement”)
  - 16 See “Ferguson Gateway Statement”



The Supreme Court has...interpreted the FTC Act to incorporate the Sherman Act's prohibition on unreasonable restraints of trade, and the Sherman Act incorporates the rule of reason for assessing whether an agreement is an unlawful restraint of trade.... The failure of the Biden Commission's rule does not mean that employers are free to impose noncompete agreements willy-nilly. The antitrust laws protect labor-market competition, and therefore prohibit unreasonable noncompete agreements that limit that competition.<sup>17</sup>

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## Analysis

The widespread use of noncompetes has several negative effects on the American economy as a whole and on American workers in particular. The two most important effects concern entrepreneurship and wages.

Noncompetes hamper innovation and entrepreneurship. When Hawaii restricted the use of noncompete agreements for technology workers, the number of technology establishments increased by over 10% amid “a diffusion of skilled technology workers across the labor market.”<sup>18</sup> The fact that noncompetes have been unenforceable in California since 1872 is frequently cited as a contributing factor to Silicon Valley's innovative and entrepreneurial dynamic.<sup>19</sup>

Noncompetes hamper wage growth and weaken worker power by limiting workers' ability to pursue opportunities freely in the labor market. Restricted from seeking better terms elsewhere, workers are locked into jobs with employers who need not negotiate wages to prevent their departure. One study found that the enforceability of noncompetes reduced hourly wages by 4% and that wage losses disproportionately affected low-wage workers relative to highly-educated workers.<sup>20</sup> Nor are noncompetes and their effects “freely” chosen by workers in many cases. Some noncompetes are enforced even against employees who are involuntarily laid off; many employees are only asked to sign a noncompete *after* accepting employment.<sup>21</sup> The legitimacy and usefulness of noncompete agreements in at least some instances is widely recognized. The most important is in the sale of a business or the dissolution of a partnership, in which the buyer requires confidence that the seller will not pocket the proceeds only to immediately become a competitor. Noncompetes in this instance promote a well-functioning free market and should be permitted, as leading legislative proposals for a strong national noncompete ban and the Biden FTC noncompete rule both acknowledge.<sup>22</sup>

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17 “Ferguson Gateway Statement”

18 Benjamin Glasner, “[The Effects of Noncompete Agreement Reforms on Business Formation: A Comparison of Hawaii and Oregon](#),” Economic Innovation Group, March 2023.

19 [EIG Comment Letter on FTC Proposed Rulemaking on Non-Compete Agreements](#), April 12, 2023.

20 Evan Starr, “[Consider This: Training, Wages, and the Enforceability of Covenants Not to Compete](#),” *Industrial and Labor Relations Review*, Volume 72 Issue 4, August 2019.

21 See “[The Workforce Mobility Act](#),” Office of Senator Chris Murphy.

22 See “Young, Murphy Reintroduce Legislation to Protect American Workers, Limit Non-Compete Clauses,” Federal Trade Commission Non-Compete Clause Final Rule.



Outside those specific instances, however, employers often argue that noncompetes are necessary to achieve their interests more broadly—particularly to protect trade secrets they have invested time and capital in developing. These concerns are legitimate. But a host of other legal tools are available to achieve those ends, including nondisclosure agreements, nonsolicitation agreements, and the private right of action afforded by state and federal trade secret law. Policymakers must weigh the potential additional “protection” afforded by noncompetes against the harms they demonstrably cause to innovation and wages. It is also hard to accept that sandwich makers—or, as in the case of the FTC’s 2025 enforcement action against Gateway Pet Memorial Services, drivers who transport pet remains for cremation—are in possession of trade secrets so threatening that workers’ rights must be sacrificed. As Ferguson put it, describing the rule of reason standard, the question is whether a given “restriction is no greater than necessary to protect the employer’s legitimate interests, and balances those interests against the hardship inflicted on the employee and any potential injury to the public.”<sup>23</sup>

The financial and personal damage noncompetes inflict on American workers—both lower-income hourly-wage earners and middle-class salaried workers—is profound. As one witness explained in an emotionally charged Senate hearing:

The company I worked with for more than 20 years had a downturn and used fear to get the management team to sign non-compete agreements. They went through bankruptcy, cut pay and despite promises - never reinstated the pay of loyal employees even after the market returned. I had an opportunity to recover my losses by joining another company and for that I was punished. I was unemployed for almost 2 years, and my family suffered both financially and emotionally. My story is a prime example of the overreach of non-compete agreements...There are other contracts a business can use that does not destroy careers. I thought this was a free country and a land of opportunity.<sup>24</sup>

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## Recommendations

Policymakers should ban noncompetes nationwide, and in the meantime the FTC should aggressively enforce current law.

- Congress should pass the *Workforce Mobility Act* or similar legislation that prohibits employers nationwide from imposing or attempting to enforce noncompete agreements.
- The statute should clarify that violation of this prohibition is an unlawful, unfair, or deceptive trade practice as described in section 18(a)(1)(B) of the *Federal Trade Commission Act*, and that the FTC has the authority and responsibility to take enforcement action against such violations. It should also give the Department of Labor dual-enforcement authority and responsibility to bring cases against violators.

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<sup>23</sup> See “Ferguson Gateway Statement”

<sup>24</sup> “Noncompete Agreements and American Workers: Hearing Before the U.S. Senate Committee on Small Business and Entrepreneurship,” 116th Congress (2019). [Testimony of Keith Bollinger](#).



- The statute should permit the use and enforcement of noncompete agreements in cases of the bona fide sale of a business or dissolution of a partnership.
- Before the enactment of national legislation, the FTC should aggressively pursue individual enforcement actions against as many perpetrators of unreasonable and abusive noncompete agreements as feasible under the FTC's current interpretation of the law. The FTC should bring enforcement actions not only against employers that impose noncompetes that are egregious or unreasonable in their terms or scope, but against employers that fail to adequately inform employees of noncompete expectations early in the hiring process, thereby depriving prospective hires of the ability to meaningfully consider the terms and enter into the contract freely and without duress.

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## Further Reading

- Evan Starr, "[Noncompete Clauses: A Policymaker's Guide through the Key Questions and Evidence](#)," Economic Innovation Group, October 31, 2023.
- "[State Noncompete Law Tracker](#)," Economic Innovation Group, September 9, 2025.
- Senator Marco Rubio, "[Opening Statement of Hon. Marco Rubio, Chairman](#)," *Noncompete Agreements and American Workers: Hearing Before the U.S. Senate Committee on Small Business and Entrepreneurship*, 116th Congress (November 14, 2019).
- Senator Todd Young, "[Free American workers from non-compete clauses](#)," *The Hill*, July 5, 2023.