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SAVE

Trump administration will likely kill the FTC's controversial noncompete rule

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The noncompete ban issued by the Federal Trade Commission emerged as one of the most talked about employment law issues in 2024 affecting workers, including medical professionals.

Noncompete agreements contractually prohibit workers from joining or starting a competing business after leaving their previous employment. These agreements typically contain terms designating for how long and where these restrictions apply. However, with President-elect **Donald J. Trump's** incoming administration, significant changes are expected at the Federal Trade Commission (FTC) in 2025 that may alter the fate of the FTC's noncompete ban.

State noncompete agreement regulations fall into four categories:



- "Full bans" prohibit noncompetes for employment but may allow exceptions for business sales or partnership dissolution
- "Income bans" use an income threshold to restrict noncompetes to higher earning employees
- "Other restrictions" impose industry-specific limitations that are not based on income
- "No restrictions" rely on case law or undefined standards to regulate noncompetes



Trump recently announced that current FTC commissioner **Andrew Ferguson** will become the next FTC chair and nominated Mark Meador to fill the seat of outgoing chair **Lina Khan** — creating a Republican majority on the FTC. This post-2024 FTC is expected to follow a free-market business approach and reject regulation, which will likely kill the FTC's noncompete ban.

Federal ban timeline

In April of last year, the FTC adopted a final rule [prohibiting most employers from maintaining or enforcing noncompetes](#) against

employees and independent contractors. The ban was intended to create new business, increase earnings for workers, lower health care costs and drive innovation. However, in August, a Texas federal judge issued [an order blocking the FTC from enforcing the rule](#), which was set to take effect on September 4, 2024. The FTC has appealed the decision.

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With the incoming Trump administration and new FTC leadership, expectations are that the FTC will discontinue the appeal to enforce the rule in 2025 and revoke the rule altogether. Critics of the rule argue that it is too much regulation, falling outside the FTC's authority.

Without a federal ban, regulation of noncompete agreements will fall to the state and local levels. Currently, only four states fully prohibit noncompetes, whereas 33 states and the District of Columbia impose restrictions.

State regulations fall into four categories: "full bans" prohibit noncompetes for employment but may allow exceptions for business sales or partnership dissolution; "income bans" use an income threshold to restrict noncompetes to higher earning employees; "other restrictions" impose industry-specific limitations that are not based on income; and "no restrictions" rely on case law or undefined standards like "reasonableness" to regulate noncompetes.

As states continue to create new law, navigating the web of state-regulated noncompetes remains challenging. In this respect, it is important for all employees and independent contractors — including physicians — to know the requirements in their jurisdictions or consult an attorney who knows them before signing such agreements or trying to negotiate with an employer that wants one as a condition of employment. Following are a few examples showing how jurisdictions may differ in their approaches to noncompete restrictions.

Local laws

California is a full ban state where noncompetes are largely unenforceable. Noncompetes are void regardless of where the contract was signed, even if employment was maintained outside of California. The only exceptions involve the sale of a business; the dissolution of a partnership; or disassociation of members or partners in a corporation, partnership, or LLC.

Tennessee is another restrictions state that allows noncompete agreements subject to some requirements but exempts physicians who

specialize in emergency medicine. Noncompete agreements with health care providers are enforceable if:

1. the agreement is in writing;
2. the restriction period does not exceed 2 years from the last day of employment; and
3. the geographic scope is limited to the greater of a 10-mile radius from the provider's primary practice site or the county where the primary practice site is located.

Although Tennessee has an exemption for emergency medicine specialists, it allows noncompetes with various health care providers, including physicians, chiropractors, podiatrists, dentists, optometrists and psychologists.

The District of Columbia uses an income threshold approach where noncompetes are generally banned, but it exempts "highly compensated employees" earning \$150,000 or more and "medical specialists" earning \$250,000 or more. These noncompetes must specify:

1. the functional scope of the competitive restriction, including what services, roles, industry or competing entities the employee is restricted from performing work in or on behalf of;
2. the geographic scope of the restriction; and
3. the restriction period, limited to 365 days from the last day of employment (or 730 days for medical specialists).

Medical specialists must also hold a medical license, be a physician, have completed residency and earn \$250,000 or more for the ban not to apply to them.

Maryland recently enacted new legislation introducing additional income threshold restrictions on noncompetes for health care professional. Beginning July 1, noncompetes will be void for health care professionals if they:

1. are licensed under the Maryland Health Occupations Article,
2. provide direct patient care; and
3. make \$350,000 or less annually.

For the same licensed health care professionals earning above \$350,000, noncompetes are enforceable only if:

1. the restriction period does not exceed one year from the last day of employment; and
2. the geographic restriction does not exceed 10 miles from the primary place of employment.

A national noncompete ban has significant implications for the health care industry. If the national ban, as expected, falls through, states will continue to have the authority to regulate noncompete agreements. In states that ban noncompetes, employers should notify employees that their prior agreements are void and refrain from entering into or enforcing new ones. In states with other restrictions, such as specific carve-outs or income thresholds, employers must identify their covered or exempt employees and ensure compliance with any legislative noncompete requirements. To ensure compliance, both employers and employees should carefully review state and local requirements and consult local legal counsel if necessary.

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