

Blog Post

Blanket Non-Competes Under Fire: What the FTC's Gateway Action Means for Employers

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Recent years have seen dramatic federal regulatory and enforcement activity regarding employee non-compete agreements. Under the Biden administration, the Federal Trade Commission (FTC) adopted a sweeping rule to ban nearly all non-compete clauses nationwide, but that rule was struck down by a federal court in 2024. After this judicial setback, rather than defend the broad ban of non-competes, the FTC instead shifted to targeting specific non-compete agreements it considers unfair under Section 5 of the Federal Trade Commission Act (FTC Act), especially those that are overly broad or lack legitimate business justification.

Last month, the FTC issued a proposed consent order against Gateway Services, Inc. and Gateway US Holdings, Inc. (collectively, Gateway), addressing the companies' use of non-compete agreements for employees in the United States. Gateway required nearly all employees — regardless of their role — to sign non-compete agreements barring them from working in the pet cremation industry nationwide for a year after leaving their employment with Gateway. Over 1,780 employees were affected, from executives to hourly workers. The FTC found these sweeping restrictions stifled competition and limited job opportunities, arguing that any legitimate

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business interests that Gateway had could be protected with less restrictive measures.

Background and Investigation of Gateway's Employment Practices

The FTC began investigating Gateway's employment practices, focusing on the use of non-compete agreements that restricted employees' ability to work for competitors or start their own businesses after leaving Gateway. The Commission's Bureau of Competition prepared a Draft Complaint, alleging that these agreements violated Section 5 of the FTC Act, which prohibits unfair methods of competition. Gateway and the FTC's Bureau of Competition reached a settlement through a Consent Agreement, which was placed on the public record for 30 days to allow for public comment before the Commission finalized its Decision and Order.

The Decision and Order defines several important terms. "Covered Employee" refers to any person employed by Gateway in the U.S., or who was employed within the previous year, including third-party contractors, but excluding certain individuals listed in a nonpublic appendix. A "Covered Non-Compete Agreement" is any agreement that restricts a Covered Employee's ability to seek or accept employment with another entity, operate a business, or otherwise compete with Gateway after leaving the company. Notably, the Order allows for non-compete agreements in connection with the sale of a business or for certain senior employees receiving equity, but otherwise prohibits their use.

Prohibitions and Requirements

The heart of the Decision and Order is a broad injunction against Gateway's use of non-compete agreements for most employees. Specifically, Gateway must:

- Cease entering into, maintaining, enforcing, or threatening to enforce any Covered Non-Compete Agreement

- Stop communicating to employees or their prospective employers that such agreements are in effect
- Not prohibit employees from soliciting customers, except for those with whom the employee had direct contact or provided service in the last 12 months of employment

Employee Notification and Compliance

Gateway is required to notify all affected employees that their non-compete agreements are null and void. Within 45 days, Gateway must send a letter and a copy of the Order to each Covered Employee, and provide new hires with a clear notice that their employment is not subject to a non-compete provision. The Order also mandates that Gateway immediately cease enforcing all existing non-compete agreements and not require employees to pay any fees or penalties related to such agreements. The Order is effective for 10 years and is designed to remedy the alleged harm to competition caused by Gateway's non-compete practices. Its purpose is to prevent Gateway from restricting employee mobility and to promote fair competition in the labor market.

This FTC action against Gateway is a landmark in the agency's efforts to limit the use of non-compete agreements that hinder worker mobility and competition. The Decision and Order not only voids existing non-competes for most Gateway employees but also imposes strict compliance, notification, and reporting obligations on the company for a decade, signaling the FTC's commitment to protecting workers' rights and promoting competitive labor markets. Employers should take note: the FTC is taking a case-by-case approach, increasing enforcement risks for companies that use blanket non-compete agreements without a clear, legitimate business justification and emphasizing the need for narrowly tailored, role-specific restriction.

To minimize legal risk, employers should review existing non-compete agreements and ensure they

are only used when truly necessary to protect legitimate business interests, such as trade secrets or key client relationships. Non-compete agreements should be narrowly tailored in scope, geography, and duration and be limited to senior staff or those with access to sensitive information. For guidance navigating the complexity of non-compete agreements and the FTC's latest enforcement action, employers are encouraged to reach out to a member of Akerman's Labor and Employment Group.

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