



AFSCME Facts

Federal Trade Commission Bans Non-Compete Clauses for Most Workers May 14, 2024

The Federal Trade Commission (FTC) has adopted a wide-reaching ban on non-compete agreements or clauses ("non-competes"). The ban on non-competes, which limit workers ability to take jobs with other employers, could benefit some AFSCME members who work for private-sector employers. This fact sheet describes key parts of the rule.

What is a non-compete?

A non-compete is a legal agreement between an employer and a worker that restricts the worker's ability to take a new job with a different employer. For example, a hospital might require nurses it hires to agree not to work for another hospital that is within 50 miles of the hiring hospital for two years after they leave employment. The FTC's final rule defines a non-compete as:

a term or condition of employment that prohibits a worker from, penalizes a worker for, or functions to prevent a worker from (1) seeking or accepting work in the United States with a different person where such work would begin after the conclusion of the employment that includes the term or condition; or (2) operating a business in the United States after the conclusion of the employment that includes the term or condition.

Employers have historically used, or claimed to use, non-competes to protect trade secrets or proprietary information. However, many employers require non-competes as a condition of employment for workers who don't have access to proprietary information. The FTC estimates that 18% of all workers are currently bound by non-competes. By restricting workers' ability to change jobs freely, non-competes suppress workers' wages.

What does the new rule do?

The final rule prohibits the enforcement of existing non-competes for most workers after the effective date. Specifically, the rule states that employers may no longer enter or attempt to enter into a non-compete, attempt to enforce a non-compete or represent a worker that is subject to a non-compete.

Existing non-competes with senior executives — which the FTC defines as workers in a policymaking position who earn more than \$151,164 annually — will remain enforceable. On or after the effective date of this rule, no new non-compete, even with a senior executive, will be enforceable (aside from the exceptions discussed below).

When does the ban go into effect?

The effective date is Sept. 4, 2024.

Are there any workers not covered by this new rule?

Yes. The rule does not apply to government agencies and most nonprofit employers because the FTC does not have jurisdiction over them. While it is possible the FTC could challenge an employer's non-profit status and apply the ban, this would happen only in very few cases.

How will workers that already signed a non-compete know they are no longer enforceable?

The final rule does not require that existing non-competes be modified. However, the rule requires clear and conspicuous notification to workers that existing non-competes are unenforceable as of the effective date. The notification must be delivered in person or by mail, email or text. The FTC provides model language for this notice. Employers are also required to provide this notice to former employees subject to a noncompete unless the employer has no record of a street address, email or mobile phone number.

How will this new rule impact AFSCME members?

This rule will apply to AFSCME members who work for a private, for-profit employer and are subject to a non-compete. For those AFSCME members who are subject to a non-compete and work for a nonprofit organization, the FTC's ban on non-competes very likely will not apply.

Will this rule interfere with pre-existing state laws that limit the use of non-competes?

California, Minnesota, Oklahoma and North Dakota have near-total state bans on the use of non-competes. Many other states restrict their enforcement to some degree. On or after the effective date, states cannot authorize non-competes that are prohibited under this rule, but states may continue to enforce restrictions on non-competes if those restrictions do not conflict with the rule.