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# FTC Signals Forthcoming Non-compete Enforcement Actions

**Law and the Workplace** on **September 10, 2025**

On September 4, 2025, the FTC announced an enforcement action and proposed settlement with Gateway Pet Memorial Services (the "Company"), a pet cremation company, over the Company's overuse of post-employment non-competes with certain terms it found concerning. At nearly the same time, the FTC withdrew its appeals pending in the Fifth and Eleventh Circuits of district court rulings issued last year, which enjoined the FTC from enforcing its final rule banning most non-competes nationwide.

In an accompanying statement, Chair Andrew Ferguson, joined by Commissioner Melissa Holyoak, emphasized their dissent to the non-compete final rule (issued by the FTC during the previous administration), and signaled that, going forward, the FTC will step away from broad rulemaking in this area and instead pursue a "steady stream" of enforcement actions to define, case by case, the boundaries of lawful non-compete agreements under the FTC Act and the Sherman Act.

In addition, in his statement concurring with the withdrawal of the FTC's appeals, Commissioner Mark Meador set forth his views on the "appropriate framework" for evaluating non-compete agreements. Commissioner Meador identified several factors that impact the "competitive character" of a non-compete, including:

- Employee wage and skill level: non-competes may be harder to justify for low-wage roles, but more defensible for highly skilled employees.
- Deployment in a distribution network: non-competes may present greater concern in franchise or similar settings with horizontal effects.
- Independent contractors: agreements with independent contractors require analysis of whether the contractor "operates under exclusive terms" or "receives dedicated resources or training."
- Likelihood of "free riding": whether the employer has made investments in training or shared proprietary information with the employee.

- Availability of less restrictive alternatives: such as non-disclosure agreements, intellectual property protections, or non-solicitation clauses.
- Scope and duration: agreements should be no broader than necessary in geographic scope, duration, and field of employment.
- Market power and economic effects: non-competes may be subject to greater scrutiny when imposed by firms with significant market power, where there is widespread use across an industry or evidence of a horizontal agreement among competitors.

**FTC Enforcement Action**

The FTC's complaint targeted the Company's practice, since 2019, of requiring nearly all employees to sign non-competes as a condition of employment. The agreements barred employees from working in the pet cremation industry anywhere in the U.S. for one year after the end of their employment with the Company. The FTC took issue with several features of the non-competes:

- The FTC stressed the lack of individualized consideration in applying the non-competes. The Company entered into the agreements with both highly compensated executives and hourly workers—including facility-level laborers who operated its cremation facilities and drivers who transported deceased pets to its crematories.
- The FTC asserted the covenants' nationwide geographic scope was overbroad. Workers would effectively be barred from working in the entire pet cremation industry nationwide, including areas where the Company had no operations.

Under the proposed consent order ("Proposed Order"), the Company must immediately cease enforcing existing non-compete agreements, and would be barred for ten years from entering into, maintaining, or enforcing non-competes with most employees. However, the Proposed Order would not apply to non-competes with a "director, officer, or senior employee" in connection with a grant of equity, or in connection with the sale of a business where the contracting individuals have equity in the business being sold.

The Proposed Order would also impose limitations on the Company's use of non-solicitation agreements, making such covenants only permissible as to current or prospective customers with whom the employee had "direct contact or personally provided service" within the last 12 months of their employment. In addition, the Proposed Order requires the Company to notify current and former employees that their non-compete agreements are null and void, and to provide clear notice to new hires that they will not be subject to such restrictions.

**Takeaways**

As Chair Ferguson noted in his accompanying statement, this enforcement action and the FTC's decision to withdraw its appeals of the lower court rulings enjoining its non-compete final rule reflect a shift from broad rulemaking to a case-by-case enforcement approach to delineate the boundaries of lawful versus unlawful non-compete agreements. Employers should anticipate additional enforcement actions, and would benefit from reviewing their non-compete agreements in view of the issues that led to the above-referenced action.

View original.

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