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FTC Focus: Antitrust Spotlight On 'Acqui-hires,' Noncompetes

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This article is part of a monthly column that considers the significance of recent Federal Trade Commission announcements about antitrust issues. In this installment, we look at the FTC's position on "acqui-hires" and what they signal about a cohesive strategy on labor issues.

The Federal Trade Commission's mission undoubtedly includes the impact of business conduct on labor issues and how conduct relating to labor affects both competitors and workers.

Through speeches in early 2026, FTC Chairman Andrew Ferguson and other commissioners have zoned in on a relatively new practice: "acqui-hire" transactions. Acqui-hires are transactions in which a company acquires the workforce of another without acquiring the company itself. They are sometimes described as reverse acqui-hires in the context discussed here.[1]

Such agreements are becoming more prevalent, and perhaps more concerning, in industries such as artificial intelligence, in which skilled labor is both a requirement to compete and scarce.

Issues involving labor markets are not new to the FTC, under the current administration or the prior one. Along with acqui-hires, the FTC has made clear its desire and willingness to investigate and enforce unfair or anticompetitive noncompete agreements and other restrictive covenants involving employees.

But context and enforcement philosophy of the current FTC may affect both how the commission analyzes and how it will work to combat practices that may restrict competition to obtain talent and the impacts of those practices on horizontal competition.

FTC And Talent Acquisition

Acqui-hires may enable the acquirer to avoid premerger notification requirements while at the same time, have the potential to cut competition off at the pass.

The FTC recently reaffirmed its commitment to evaluating acqui-hires. Speaking at a Jan. 15 technology antitrust conference, Commissioner Mark Meador said growing economic research suggests that acqui-hires can harm competition if firms acquire talent not to deploy it productively, but to deny rivals access to skilled workers.[2]

Meador likened the practice to "buy and kill, but for ultra-skilled labor."[3] He focused on the need for meaningful innovation — particularly in the tech industry.

Meador noted that in 2025, many acqui-hires played out in the AI research sector, leading individuals to abandon their startups and to further consolidation in dominant firms in tech.[4] This sentiment comes as the FTC mulls how to navigate tricky issues that AI presents for antitrust enforcers.[5]

Procedurally, the FTC is further concerned with the ability of an acquiring party to structure deals to avoid premerger notification review.[6]

Accordingly, Meador highlighted the "importance of looking past formal transaction structure and asking whether the deal harms innovation and access to specialized talent, which is critical for the startup economy and winning the AI race in the right way."[7]

Ferguson stressed that companies should not try to avoid the premerger notification process and the FTC's desire to openly and fairly evaluate deals that may implicate these issues.[8]

Notably, bringing together another piece of the FTC's strategy on labor issues, Meador warned that the competitive risks of acqui-hires may be heightened where restrictive covenants further limit worker mobility.[9]

FTC Noncompete Policy Highlights Its Cohesiveness on Labor Issues

Announcing the formation of the FTC's labor task force in a February 2025 announcement, Ferguson wrote that it is "important to remember that the FTC's authority includes protecting the same American consumers in their roles as workers. A healthy labor market is critical to the country's success."[10]

Consistent with that initiative, acqui-hires have not been the only labor-related issue on the FTC's radar so far this year as it continues to make clear its stance on noncompete agreements and other restrictive covenants limiting worker mobility.

In prepared remarks at a Jan 27 FTC workshop on noncompetes, Ferguson stated that the FTC "should focus its enforcement resources on those noncompete agreements that do not advance a procompetitive purpose or else are not narrowly tailored to advance a procompetitive purpose."[11]

FTC to Take a Case-by-Case Approach to Labor Issues.

What is clear from both the FTC's stance on acqui-hires and noncompetes is that the current FTC favors case-by-case enforcement rather than blanket rules.

Ferguson opened the FTC's noncompete workshop by clarifying that he and former Commissioner Melissa Holyoak did not object to the near-complete ban on noncompete provisions on the basis that noncompete agreements cannot have anticompetitive effects, but rather on the basis that the FTC does not have the power to assert such regulatory authority.[12]

And although the FTC has abandoned the nationwide noncompete rule, scrutiny of restrictive employment agreements is continuing through case-by-case enforcement.[13]

In the FTC's Feb. 12 decision in the Matter of Adamas Amenity Service and its Nov. 15 decision in the matter of Gateway Services Inc., the commission entered into consent decrees with companies that entered into unlawful no-hire and noncompete agreements.[14]

Similarly, as to acqui-hires, Ferguson stated in a Bloomberg podcast that the FTC "wouldn't be setting acqui-hire rules generally."[15] In a stated departure from the stance of FTC during the Biden administration, Ferguson espoused that the FTC will get out of the way quickly if it determines the deal is legal but will not hesitate to make its case in court if not.

Relevant Harms to Competitors and Consumers, Not Just to Workers.

While the focus of noncompete restrictions is often on the impact on workers, the FTC also looks at the impact on competing companies and consumers.[16]

At the workshop on noncompetes, Ferguson explicitly recognized that "because noncompete agreements prohibit an employee from working for a rival business and from forming a new competing business, they reduce competition by raising barriers to entry or expansion for potential rivals."[17]

Furthermore, a noncompete agreement can also harm consumers because "it impedes the formation or expansion of rival businesses, which would potentially reduce prices, increase innovation and choice, and improve quality," Ferguson stated at the workshop.[18]

In the Adamas and Gateway matters, the commission tied worker mobility restrictions to reduced rival bidding, diminished entry, weakened investment incentives and ultimately harm to consumers.

Similarly, in the acqui-hire context, the recent statements discussed above have framed talent acquisitions as raising familiar horizontal concerns about eliminating nascent competitors or foreclosing competitive threats.

Using FTC Statements to Review Business Practices, Evaluate Risk

When dealing with issues involving labor — whether those issues involve a potential transaction, reviewing covenants in employment agreements or beyond — the FTC's recent statements and enforcement actions provide helpful information to help guide risk assessment and decision-making.

First, take a holistic view of how an impact on labor can affect employees, the market for employees, horizontal competitors of your business, the market in which you operate and consumers. The FTC is not analyzing labor solely through a labor-market lens.

Also look at labor-related issues with a broad lens. For instance, if employees coming over from a talent acquisition are also subject to restrictive covenants, be sure to evaluate those issues together.

Second, go back to basics. The FTC has made clear that it is taking a more traditional view of enforcement; for instance, by looking at common law principles to evaluate noncompete agreements and traditional merger analysis when analyzing acqui-hire agreements.

However, efforts to subvert enforcement by changing the form of your employment-related conduct will likely be scrutinized. This is true with respect to restrictive covenants and deals.

Finally, context and industry matter. The FTC has been open about its focus on certain industries. For instance, noncompetes in the medical sector were a centerpiece of the January workshop.

Tech and AI have a clear spotlight on them when it comes to acqui-hires. The FTC will not take a one-size-fits-all approach to these issues, so it is important to dig into the impact of these issues on the industry in which you are operating or advising.

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[1]https://www.analysisgroup.com/globalassets/insights/publishing/2026_cpi_aquihires_in_

[2]https://www.ftc.gov/system/files/ftc_gov/pdf/meador-concurrences-keynote.pdf.

[3]https://www.ftc.gov/system/files/ftc_gov/pdf/meador-concurrences-keynote.pdf.

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[10] https://www.ftc.gov/system/files/ftc_gov/pdf/memorandum-chairman-ferguson-re-labor-task-force-2025-02-26.pdf.

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[16] https://www.ftc.gov/system/files/ftc_gov/pdf/Adamas-Complaint.pdf; https://www.ftc.gov/system/files/ftc_gov/pdf/Gateway-Complaint.pdf.

[17] https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-prepared-remarks-ftc-workshop-on-noncompetes.pdf.

[18] https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-prepared-remarks-ftc-workshop-on-noncompetes.pdf.

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