
EMPLOYER ALERT: Non-Compete Ban Status and Remaining Risks

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Abrams Fensterman, LLP Partner & Director of Employment Law Practice, [Rachel Demarest Gold](#), issues an important Employer Alert: The FTC's nationwide non-compete ban, originally set to take effect on September 4th, has been overturned. While non-competes face scrutiny in New York, businesses still have tools to protect their interests. Trade secret laws and non-solicitation agreements remain strong safeguards. Employers can stay ahead of the curve and ensure that agreements are enforceable.

The alert notes that while the FTC has said it will not appeal the decision, the Agency will try using its enforcement powers to pursue its policy of banning Non-Competes. More info on the FTC powers regarding its Non-Compete policy can be found [here](#).



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I hope you all enjoyed the long weekend brought to you by Unions and the Labor Movement (which started in New York, btw).

Turning back to the workplace, Employers need to know that the FTC nationwide ban on all non-competes that was *scheduled to take effect Wednesday September 4th* **has been struck down** and will no longer become law later this week.

That said, there are a few things Employers need to know.

Most importantly, New York courts already disfavor non-compete agreements. Unless the employee is serving in a highly specialized, senior level role, it is very hard to get a non-compete upheld. In fact, there have been several attempts to eliminate them altogether like states including California, Minnesota, North Dakota, and Oklahoma, have done. The law passed both houses of our State Legislature last year but was vetoed by the Governor. In short, in New York, non-competes are probably not long for this world.

That does not mean that there is no protection for Employers or their confidential information. Trade secret laws, confidentiality, and non-solicitation provisions are still perfectly legitimate and in fact are protected by law.

Also, though the FTC has not said that it will appeal the decision, the Agency has made it clear that it will use its enforcement powers to pursue its policy on non-competes. They are charged with protecting the flow of commerce and believe that non-competes impede commerce by imposing restrictions on workers. More information on their powers and position is here: <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-cracks-down-companies-impose-harmful-noncompete-restrictions-thousands-workers>

The bottom line here is that most non-competes, except for very limited circumstances, are already illegal in New York for most intents and purposes. Employers need to understand that this is no longer a common or best practice and work with their Counsel and Human Resource professionals to draft agreements that will effectively protect their interests.

This is for informational purposes only and is not legal advice.