



# The FTC final rule on Noncompete Agreements - Common Questions:

The FTC published a final rule banning Noncompete Agreements for most workers. “Workers” include employees, independent contractors, interns, volunteers, and more. There are limited exceptions to the rule. Lawsuits challenging the rule have been filed and could delay or prevent implementation; these pending challenges mean the rule’s application is uncertain for now.

## Current Texas State Law regarding Noncompete Agreements:

- For now, Texas law is unchanged and unimpacted by the FTC rule.
- Texas will enforce a non-compete agreement if it meets the following 3 requirements:
  - it is included with another agreement (such as an employment contract);
  - is made in exchange for something in return, (providing confidential information or training after entering a Noncompete Agreement is sufficient); and
  - it has reasonable limitations on the scope of restricted activity, length of the Noncompete period, and size of the geographic area covered by the Noncompete.
- Additionally, a covenant not to compete for a physician licensed by the Texas State Board of Medical Examiners must contain a buyout provision to be enforceable.
- This is the current state of affairs for Texas noncompetes. If you are negotiating a new contract that contains a noncompete clause, you may try to mention the FTC rule for leverage to decrease the scope, mileage, or time restrictions or a more favorable buyout provision.

## FTC Noncompete Rule Summary:

- It becomes effective on September 4, 2024, if it is not delayed or prevented by court rulings.
- State laws restricting Noncompete Agreements are still in effect and unaffected by the rule at this time.
- **Lawsuits have already been filed challenging the validity of the rule.**
  - Some courts have already granted injunctions, rulings are expected before the effective date which may prevent the rule from going into effect.
  - The lawsuits challenge the FTC’s authority to enact the rule and, if successful, the entire rule would likely be invalidated.
- Prohibits employers from enforcing, entering, or representing to employees that they are subject to Noncompete Agreements.
  - All existing Noncompete Agreements become unenforceable on the effective date, with an exception for “Senior Executives” (e.g. a president or CEO) who earn more than \$151,164 per year.
    - New Noncompete Agreements for Senior Executives on or after September 4, 2024, are prohibited.
  - Noncompete Agreements when a business is sold, preventing the seller from competing with the business that is sold, are still valid and allowed.
    - This exception does not apply to workers employed by the sold business.
  - The rule does not restrict or prohibit exclusivity/outside activity restrictions such as prohibiting moonlighting.
- On or before September 4, 2024, employers must notify employees with a Noncompete Agreement that their Agreement is no longer enforceable.
- The FTC’s jurisdiction does not generally cover nonprofit organizations. However, certain nonprofits are covered by this rule.
  - The FTC made clear that doctors and healthcare were considered in creating this rule, and that they believe the benefits outweigh the costs to the industry.

See the FTC Noncompete Rule page for details including a summary, model notices for employers, and additional resources: <https://www.ftc.gov/legal-library/browse/rules/Noncompete-rule>



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