



Non-Competes & Non-Solicitations: Latest U.S. Federal and Minnesota Regulations

Executive Summary

Federal

On April 23, 2024, the **Federal Trade Commission (FTC)** issued a landmark rule banning non-compete agreements nationwide to enhance worker mobility, promote innovation, and stimulate economic growth. **FTC** Chair Lina M. Khan emphasized that non-compete clauses depress wages, hinder innovation, and dampen economic dynamism. The rule, projected to create over 8,500 new businesses annually, faces legal challenges, especially from the healthcare sector, which contends it exceeds **FTC** authority and may disrupt services.

The ban on non-competes presents five positive impacts: increased innovation, higher wages, new business formation, reduced legal costs, and improved employee retention. Conversely, it also poses challenges: heightened competition for talent, potential loss of trade secrets, compliance costs, litigation risks, and strategic planning impacts. Businesses must bolster trade secret protections and revise strategies, likely incurring higher recruitment and legal expenses.

Key themes to monitor over the next 12-24 months include legal challenges, state-level responses, trade secret protection, employee retention, recruitment practices, workforce mobility, economic impacts, regulatory compliance, executive compensation, and technological advancements. To adapt, businesses should revise contracts, enhance employee retention and recruitment, and strengthen intellectual property protections. These actions are vital to navigating the new regulatory landscape effectively.

Minnesota

In 2023, **Minnesota** enacted legislation banning non-compete agreements, effective July 1, 2023, aligning itself with states like **California**, **Oklahoma**, and **North Dakota**. This law voids agreements restricting employees from working for competitors post-employment but allows non-disclosure and non-solicitation clauses. In 2024, **Minnesota** extended this ban to include non-solicitation clauses, effective July 1, 2024, impacting service providers and staffing agencies by preventing them from restricting clients from hiring placed employees. This shift is part of a broader effort to promote employee mobility and dismantle barriers restricting worker opportunities.

The ban enhances employee mobility, fosters career growth, job satisfaction, and creates a competitive labor market, benefiting talent acquisition, innovation, legal cost reduction, and employee relations. However, it also risks proprietary information leaks, increased turnover, challenges in maintaining client relationships, impacts on business models, and higher compliance costs.

Businesses must now enhance employee retention strategies, strengthen non-disclosure agreements, adapt business models, and monitor legislative developments to navigate this new landscape. Key actions include promoting career development, offering competitive benefits, drafting robust NDAs, providing regular data security training, revising contracts, and innovating retention strategies to maintain a competitive edge and ensure compliance.

Detailed analysis for federal and Minnesota regulations are detailed in the next sections respectively.

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The Federal Landscape

On April 23, 2024, the Federal Trade Commission (FTC) made a landmark decision by issuing a final rule that bans non-compete agreements nationwide. This rule aims to protect workers' rights to change jobs and start new businesses, thereby fostering innovation and economic growth. FTC Chair Lina M. Khan highlighted that non-compete clauses suppress wages, stifle new ideas, and diminish economic dynamism. The FTC estimates that this rule will lead to the creation of over 8,500 new businesses each year, raise workers' earnings, and reduce healthcare costs significantly. However, the rule faces legal challenges and opposition from various sectors, including the healthcare industry, which argues that it oversteps FTC's authority and could harm service delivery. As the rule's effective date approaches, businesses must prepare to adapt to this regulatory shift that promises to reshape the competitive landscape of the American economy.

Impact of Federal Rules on Industry

The top five positive business impacts of banning non-compete agreements include increased innovation, higher employee wages, new business formation, reduced legal and administrative costs, and improved employee retention and loyalty. **The Federal Trade Commission** estimates an additional 8,500 new businesses yearly, stimulating economic growth and job creation. The ban on non-competes brings challenges including increased competition for talent, potential loss of trade secrets, adjustment period and compliance costs, litigation risks, and impact on strategic planning. Companies will need to strengthen trade secret protection and rethink strategies, potentially facing

higher recruitment and legal costs.

Top 5 Positive Impacts

1. **Increased Innovation**
 - With the removal of non-compete agreements, employees can freely move between companies, bringing new ideas and perspectives, which fosters innovation across industries. Companies will benefit from a more dynamic and competitive environment, leading to the development of novel products and services.
2. **Higher Employee Wages**
 - The ban on non-competes is expected to increase worker mobility, driving up wages as employers compete to attract top talent. This can lead to a more motivated and satisfied workforce, contributing to higher productivity and business growth.
3. **New Business Formation**
 - The FTC estimates an additional 8,500 new businesses will be created each year due to the rule, as employees can now pursue entrepreneurial ventures without legal constraints. This surge in startups will stimulate economic growth and create more job opportunities, benefiting the overall economy.
4. **Reduced Legal and Administrative Costs**
 - Companies will save on legal fees and administrative burdens associated with drafting, enforcing, and litigating non-compete agreements. These resources can be redirected towards more productive investments, such as employee development and business expansion.
5. **Improved Employee Retention and Loyalty**
 - Employers may focus on improving workplace conditions, benefits, and career development opportunities to retain employees, leading to a more engaged and loyal workforce. A positive work environment can reduce turnover rates and enhance organizational stability.

Top 5 Negative Impacts

1. **Increased Competition for Talent**

- The ban on non-competes will intensify competition for skilled workers, as employees have more freedom to switch jobs. Companies may face challenges in retaining top talent, leading to potential disruptions in operations and increased recruitment costs.
- 2. **Potential Loss of Trade Secrets**
 - Without non-competes, there is a heightened risk of employees joining competitors and sharing proprietary information, which could harm businesses. Companies will need to strengthen their trade secret protection measures, such as more stringent NDAs and internal security protocols.
- 3. **Adjustment Period and Compliance Costs**
 - Businesses will incur costs related to reviewing and amending existing contracts, as well as communicating the changes to employees. This transition period may temporarily disrupt normal business operations and require additional legal and administrative resources.
- 4. **Litigation Risks**
 - The broad definitions in the FTC's rule could lead to legal ambiguities and increased litigation over what constitutes a de facto non-compete. Companies might face lawsuits challenging the enforceability of other restrictive covenants, adding to legal uncertainties and costs.
- 5. **Impact on Strategic Planning**
 - Companies that heavily relied on non-competes for their strategic planning and competitive advantage will need to rethink their business strategies. This shift may require significant adjustments in how businesses manage their workforce and intellectual property.

Top 10 Themes to Watch Out for in the Next 12 to 24 Months

The FTC's final rule banning non-compete agreements is expected to generate significant economic benefits, including increased innovation, higher wages, and new business formation. However, businesses must navigate the challenges of compliance, talent retention, and trade secret protection. The following recommendations provide guidance for employers to adapt to the new regulatory landscape effectively, ensuring they remain competitive and legally compliant.

1. **Legal Challenges and Court Rulings:** Legal battles will shape the final implementation of the FTC's rule.
 - Monitor ongoing lawsuits and court decisions.
 - Prepare for potential changes in compliance requirements.
2. **State-Level Responses:** States may enact their own laws in response to the federal rule.
 - Stay updated on state legislation regarding non-competes (we'll discuss Minnesota's on a separate document)
 - Ensure company policies are compliant with both federal and state laws.
3. **Trade Secret Protections:** Strengthening trade secret protections will be crucial without non-competes.
 - Enhance NDAs and confidentiality agreements.
 - Implement robust internal security measures.
4. **Employee Retention Strategies:** Retaining talent will be more challenging without non-competes.
 - Improve employee benefits and working conditions.
 - Develop clear career advancement paths.
5. **Impact on Recruitment Practices:** Companies will need new strategies to attract and hire top talent.
 - Offer competitive wages and flexible work arrangements.
 - Focus on employer branding and employee value propositions.
6. **Adaptation to Increased Workforce Mobility:** Employees will have more freedom to change jobs, impacting workforce stability.
 - Foster a positive company culture to retain employees.
 - Invest in employee training and development programs.
7. **Economic and Market Impacts:** The rule will have broad economic implications, affecting various industries.
 - Analyze market trends and adjust business strategies accordingly.
 - Stay agile to respond to economic shifts and opportunities.
8. **Regulatory Compliance:** Ensuring compliance with the new rule is essential to avoid legal penalties.
 - Conduct regular audits of employment contracts and policies.
 - Provide training for HR and legal teams on the new regulations.

9. **Role of Executive Compensation:** Senior executives are exempt from the rule, affecting executive contracts.
 - Review and update executive agreements to align with the rule.
 - Consider alternative incentives for executive retention.
10. **Technological Advancements and Innovation:** Increased innovation is expected as employees move freely between companies.
 - Encourage a culture of innovation within the organization.
 - Leverage technological tools to protect intellectual property and trade secrets.

Top 3 Actions Businesses Can Take

With the FTC's new rule banning non-compete agreements set to take effect, businesses must adapt quickly to ensure compliance and maintain competitive advantages. The following actions provide a strategic framework for companies to navigate this regulatory shift effectively, safeguarding their interests while fostering a dynamic and innovative workforce.

1. Revise Employment Contracts and Policies

Why It's Important: Ensuring that all employment contracts and policies comply with the new FTC rule is crucial to avoid legal penalties and maintain operational integrity. **Key Steps:**

- Conduct a comprehensive review of all existing employment contracts to identify and remove non-compete clauses.
- Implement alternative protective measures such as non-disclosure agreements (NDAs) and non-solicitation clauses, ensuring they are narrowly tailored to avoid being construed as de facto non-competes.
- Provide training for HR and legal teams to understand the new regulations and effectively implement compliant practices.

2. Enhance Employee Retention and Recruitment Strategies:

Why It's Important: With increased employee mobility, businesses need to strengthen their efforts to attract and retain top talent to remain competitive. **Key Steps:**

- Improve employee benefits, working conditions, and career development opportunities to enhance job satisfaction and loyalty.
- Develop a strong employer brand and employee value proposition to attract high-quality candidates.
- Offer competitive wages, flexible work arrangements, and innovative incentive programs to retain key employees.

3. Strengthen Trade Secret and Intellectual Property Protections:

Why It's Important: Protecting sensitive business information is essential in an environment where employees can move more freely between companies. **Key Steps:**

- Enhance the use of NDAs and confidentiality agreements to safeguard proprietary information.
- Implement robust internal security measures, including regular audits and monitoring, to protect trade secrets.
- Invest in employee training programs to educate staff about the importance of maintaining confidentiality and the legal implications of misusing company information.

The Minnesota Landscape

In 2023, Minnesota enacted legislation banning non-compete agreements, effective July 1, 2023 **going forward**. The law voids agreements restricting employees from working for competitors post-employment but allows non-disclosure and non-solicitation clauses. This move aligns Minnesota with states like California, Oklahoma, and North Dakota in promoting employee mobility. In 2024 Minnesota enacted **another** ban on non-solicitation clauses, effective July 1, 2024. This new legislation, following the 2023 ban on non-competes, extends restrictions to service providers, including staffing agencies, preventing them from prohibiting their clients from hiring placed employees. This shift is part of Minnesota's (**and other states'**) broader effort to promote employee mobility and dismantle barriers that restrict worker opportunities. As businesses and service providers navigate these changes, they must review and adjust their employment contracts and client agreements to comply with the new legal landscape.

Impact of Minnesota Rules on Industry

A **Minnesota** ban on non-compete and non-solicitation agreements enables employee mobility, fostering career growth and job satisfaction, and creating a competitive labor market. This change enhances talent acquisition, boosts innovation and entrepreneurship, reduces legal costs, and improves employee relations and morale.

On the other hand this ban risks proprietary information leaks, increased employee turnover, challenges in maintaining client relationships, and impacts on business models. Companies might face legal ambiguities and higher compliance costs as they adjust to the new legal landscape.

Business Impact

Top 5 Positive Impacts

1. **Increased Employee Mobility** The ban on non-compete and non-solicitation agreements in Minnesota allows employees to freely move between jobs without legal restrictions. This can lead to greater career advancement opportunities and job satisfaction, ultimately fostering a more dynamic and competitive labor market.
2. **Enhanced Talent Acquisition** Businesses can now recruit top talent without worrying about restrictive covenants. This can result in a more skilled and diverse workforce, as companies are able to attract employees who were previously bound by non-compete agreements.
3. **Boost to Innovation and Entrepreneurship** With fewer restrictions on employee movement, there is potential for increased innovation and entrepreneurship. Former employees can start their own businesses or join startups, bringing new ideas and competition to the market.
4. **Reduction in Legal Costs** Companies may experience lower legal costs by not having to draft, enforce, or defend non-compete and non-solicitation agreements. This reduction in legal expenses can be reallocated to other areas of the business, such as development and employee benefits.
5. **Improved Employee Relations** The elimination of restrictive covenants can lead to improved employee relations and morale. Employees may feel more valued and trusted, which can enhance loyalty and reduce turnover rates.

Top 5 Negative Impacts

1. **Potential Loss of Proprietary Information** Without non-compete agreements, companies might face increased risks of proprietary information and trade secrets being shared with competitors. This could result in competitive disadvantages and potential financial losses.
2. **Increased Employee Turnover** The ability of employees to move freely between jobs might lead to higher turnover rates. This can result in increased recruitment and training costs as businesses continuously need to replace departing employees.
3. **Challenges in Maintaining Client Relationships** Service providers might struggle to maintain long-term client relationships if their employees, who have built strong client connections, are hired away by those clients. This could disrupt service continuity and client satisfaction.

4. **Impact on Business Models** Companies, particularly staffing agencies and service providers, that rely on non-solicitation clauses to protect their workforce investments may need to significantly alter their business models. This could involve restructuring contracts and finding new ways to retain employees.
5. **Legal Ambiguities and Compliance Costs** Navigating the new legal landscape may involve compliance challenges and potential ambiguities, especially concerning what constitutes reasonable non-solicitation and non-disclosure provisions. Companies may incur costs for legal consultations and adjustments to existing contracts.

Top 10 Themes to Watch Out for in the Next 12 to 24 Months

The recent legislative changes in Minnesota, banning non-compete and non-solicitation agreements, highlight the need for businesses to adapt. To navigate this new landscape, companies should focus on enhancing employee retention strategies, investing in robust non-disclosure agreements to protect proprietary information, and re-evaluating their business models to align with the new legal requirements.

1. **Employee Retention Strategies** Importance: Businesses will need to develop new ways to retain talent without relying on non-compete agreements.
 - Implement competitive compensation and benefits packages.
 - Foster a positive and inclusive workplace culture to increase employee satisfaction and loyalty.
2. **Strengthening Non-Disclosure Agreements** Importance: Protecting confidential information remains crucial as employees gain more mobility.
 - Draft comprehensive non-disclosure agreements focusing on protecting trade secrets and sensitive information.
 - Conduct regular training on data security and confidentiality.
3. **Adapting Business Models** Importance: Companies must rethink their operational strategies in light of the ban on non-solicitation clauses.
 - Develop new service agreements that do not rely on restrictive covenants.
 - Explore alternative revenue streams and customer engagement methods.
4. **Legal and Compliance Adjustments** Importance: Ensuring compliance with the new laws is critical to avoid legal repercussions.
 - Regularly consult with legal experts to stay updated on legislative changes.
 - Review and amend existing contracts to ensure they comply with the new regulations.
5. **Impact on Competitive Landscape** Importance: The elimination of non-compete agreements may alter the competitive dynamics within industries.
 - Monitor market trends and competitor strategies.
 - Be prepared to adjust business strategies in response to increased competition.
6. **Talent Acquisition** Importance: With fewer restrictions, acquiring top talent becomes more competitive.
 - Enhance recruitment strategies to attract high-quality candidates.
 - Promote the company's commitment to employee growth and mobility.
7. **Client Relationship Management** Importance: Maintaining strong client relationships is vital as employees gain the freedom to move to client companies.
 - Strengthen client loyalty programs and service quality.
 - Regularly communicate with clients to understand and address their needs.
8. **Employee Training and Development** Importance: Investing in employee skills and career development can increase retention and productivity.
 - Offer continuous learning and development opportunities.
 - Create clear career progression paths within the company.
9. **Technological Investments** Importance: Leveraging technology can help mitigate some of the risks associated with the new laws.
 - Invest in technology to enhance operational efficiency and data security.
 - Use HR software to better manage employee engagement and retention.
10. **Monitoring Legislative Developments** Importance: Keeping abreast of ongoing and future legislative changes is crucial for strategic planning.
 - Establish a dedicated team to monitor and analyze legal developments.

- Participate in industry groups and advocacy efforts to stay informed and influence future policy.

Top 3 Actions Businesses Can Take

With the new laws in Minnesota banning non-compete and non-solicitation agreements, businesses must adapt to ensure compliance and maintain a competitive edge. Here are the top three actions businesses and nonprofits can take to navigate these changes effectively.

1. **Enhance Employee Retention Programs Why it's important:** With the inability to use non-compete agreements, retaining talent through positive engagement and development initiatives becomes critical.
 - **Implement Comprehensive Benefits and Rewards:** Offer competitive salaries, benefits, and performance-based rewards to make employees feel valued.
 - **Promote Career Development:** Provide clear career paths, mentorship programs, and opportunities for professional growth to retain top talent.
2. **Strengthen Legal Protections for Confidential Information Why it's important:** Protecting trade secrets and sensitive information is crucial as employee mobility increases.
 - **Draft Robust Non-Disclosure Agreements:** Ensure that NDAs are detailed and enforceable, covering all aspects of confidential information.
 - **Conduct Regular Training:** Educate employees on the importance of data security and confidentiality protocols to minimize risks of information leakage.
3. **Adapt Business Models to the New Legal Landscape Why it's important:** Businesses must align their operations with the new laws to avoid legal pitfalls and maintain operational efficiency.
 - **Review and Revise Contracts:** Work with legal counsel to update existing contracts and draft new ones that comply with the new regulations, focusing on non-solicitation and non-disclosure clauses.
 - **Innovate Retention Strategies:** Develop new ways to incentivize clients and employees, such as through loyalty programs and improved service offerings.