



UNITED STATES OF AMERICA
FEDERAL TRADE COMMIS3SC3SC3S39 0 0 71.2499989 84 65DERAL TR4BD44

materials that you may find helpful—including a summary, fact sheet, and compliance guide—are posted on the FTC website.⁴

Evidence of the Harmful Effects of Noncompetes

Many Americans are affected by noncompetes and support banning them. After the Commission proposed to ban noncompetes, the Commission received more than 26,000 comments. Of those, approximately 25,000 favored a categorical ban.⁵ Many workers described how noncompetes blocked them from taking a better job, negotiating better pay, or starting a business. Many entrepreneurs and small businesses also described how noncompetes prevented them from starting a business or hiring qualified workers.⁶ Many of the comments were from workers, businesses, and others in New York—including many health care practitioners. You can find such comments on the FTC’s public docket at Regulations.gov.⁷

The evidence shows that noncompetes are used extensively, including even for low-wage workers. The Commission found that nationwide, approximately one in five workers—or thirty million Americans—are bound by noncompetes.⁸ One survey found that 35% of workers without a bachelor’s degree or higher

to negatively affect competitive conditions in both labor and product and service markets.¹⁶ The Commission found that because noncompetes decrease mobility and competition in the labor market, they suppress wages not only for the workers subject to them, but also for workers who are not subject to them.¹⁷ The Commission estimates that its rule would increase workers' earnings by \$400-\$488 billion over the next decade, and an average worker would earn \$524 more per year and that in New York an average worker will earn \$793 more per year.¹⁸

The Commission further found that noncompetes negatively affect competitive conditions in markets for products and services, inhibiting new business formation, decreasing innovation, and raising prices.¹⁹ T

(w)-2 (i)-6 (l)-6 (l)-6 (e6363e-6 (n)-4 (gb2 (he)4 (r)t4 (r)3 (f -1.1 Td(i)-2-2 (a)4 (r)3 (ke)4 (Tw 0 1.15 Tow(tiv)2 93)Tj7.1 Td

outside the FTC's jurisdiction—including, among others, certain healthcare non-profits.²⁹ Thus, state laws can fill gaps with respect to noncompetes that are beyond the FTC's jurisdiction.³⁰

Moreover, states' noncompete laws, unlike the FTC Act, may provide for a private right of action and/or monetary penalties.³¹ State penalties can be substantial and may be particularly important as a deterrent, as can parallel enforcement of state laws.³²

As the Commission explains in the final rule, the rule would not preempt state laws that restrict noncompetes and do not conflict with it, including both broader state prohibitions and state prohibitions that are narrower in scope.³³ That is, state laws cannot authorize noncompetes that are prohibited by the rule, but states may, for example, continue to pursue enforcement actions under their laws prohibiting noncompetes even if the state law prohibits a narrower subset of noncompetes than the FTC's rule.³⁴

In short, the FTC's rule does not negate the value of state laws that restrict noncompetes. Rather, such laws can play an important role in the battle against harmful noncompetes.

I
