



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of Policy Planning

November 28, 2023

VIA ELECTRONIC MAIL

The Honorable Kathy Hochul  
Governor of New York State  
NYS State Capitol Building  
Albany, NY 12224

Re: New York's Bill on Non-Compete Clauses

Dear Governor Hochul

I write this letter as

We understand that your office is considering a bill that passed the NY State Senate and State Assembly, S3100A and A1278B, to restrict the use of non-compete clauses in employment. As referenced in the justifications for S3100A, the FTC proposed a rule in January of 2023 banning non-compete clauses in employment at all wage levels. In doing so, the FTC made several preliminary findings that you may find informative as you consider this bill. That notice of proposed rulemaking (NPRM) is attached to this letter.

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As the NPRM notes, nationwide, approximately one in five workers—thirty million Americans—are bound by non-compete clauses.<sup>2</sup> In total, the FTC estimates that banning non-compete clauses could increase workers' earnings by approximately \$250 to \$296 billion per year.<sup>3</sup> The FTC preliminarily concludes that because non-compete clauses decrease mobility and competition in the labor market, these clauses lower wages for both workers who are and are not subject to them. The FTC also made preliminary findings that non-compete clauses harm innovation and prevent new businesses from forming.<sup>5</sup> The FTC's proposed rule would both ban employers from entering into non-

<sup>1</sup> The proposal and additional information are also available on our website at <https://www.ftc.gov/legal/library/browse/federalregister/notice/no-compete-clause-rulemaking>, and in the Federal Register at Non-Compete Clause Rule 8 Fed. Reg. 3482 (proposed Jan. 19, 2023).

<sup>2</sup> Non-Compete Clause Rule 8 Fed. Reg. at 3485.

<sup>3</sup> Id. at 3501.

<sup>4</sup> Id.

<sup>5</sup> Id. at 3502.



clauses, including for both low and high wage workers, on pages 3512. The proposed rule's relation to state law is explained on page 3515.

- The FTC sets forth alternative proposals on pages 3526. It discusses the advantages and disadvantages of a uniform rule versus differentiating between categories of workers such as low and high wage workers on pages 3519.

The comment period on the proposed rule closed on April 19, 2023. We received more than 21,000 comments from members of the public, which are publicly available and searchable on Regulations.gov.<sup>8</sup> Some of those commenters identify themselves as New York residents, businesses, and New York based organizations. We also received a joint comment from New York's Attorney General and the Attorneys General of several other states<sup>9</sup>

We hope that the research and analysis the FTC has undertaken concerning no-compete clauses is valuable to you as you consider this

Sincerely,

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Sarah Mackey Barr  
Deputy Director  
Office of Policy Planning

cc: New York State Senator Sean M. Ryan

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<sup>8</sup> Public Comments, No-Compete Clause Rule NPRM (Jan. 9, 2023), available at <https://www.regulations.gov/document/F-2023-0007-0001>.

<sup>9</sup> Comment FTC-2023-0007-21043 (April 19, 2023) at <https://www.regulations.gov/comment/F-2023-0007-21043>.