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ISSUE ALERTS

THE FTC IS TAKING A CLOSER LOOK AT NONCOMPETES: WHAT THE RECENT CRACKDOWN MEANS FOR EMPLOYERS

June 1, 2026

By: Scott C. Nehrbass and Sara O'Keefe

Noncompetes can touch every industry, and lately, there has been an uptick in noncompete litigation and confusion among the masses. Urban myths that noncompetes “aren’t worth the paper they’re written on” and have been “banned by the federal government” persist. Meanwhile, even under the Trump administration, the Federal Trade Commission ("FTC") has actively targeted certain industries for overuse of noncompetes. And right here in Kansas, our newly enacted noncompete statute is already becoming the subject of litigation. In this climate, clarity on the current regulatory reality is essential for businesses.

RECENT SCRUTINY FROM THE FTC

Seemingly undeterred by the failure of its 2024 final rule banning noncompete agreements, the FTC signaled last month that it will continue combating those agreements it finds “unfair and anticompetitive.”

On April 15, 2026, the FTC ordered pest-control company Rollins, Inc. to cease enforcement of noncompete agreements against its employees. According to the FTC’s press release, Rollins imposed noncompete agreements on nearly all its employees (more than 18,000 nationwide), typically prohibiting them from working for another pest-control provider within a 75-mile radius of a Rollins location for two years after ending their employment with Rollins.

At the same time, the FTC sent warning letters to 13 other companies in the pest-control industry, encouraging them to conduct a comprehensive review of any restrictive covenant agreements to “ensure that they comply with applicable laws and are appropriately tailored to the circumstances.” In the letters, the FTC indicated that its review of the industry suggested that other pest-control companies maintained agreements similar to Rollins’ noncompete, thereby similarly imposing the same “unlawful worker restraints” on employees.

The FTC identified several apparent concerns with respect to Rollins' noncompete agreements, including lack of individualized consideration for the employees' roles. According to the FTC's complaint, a "broad range" of employees were required to execute the noncompete agreements, including pest-control technicians, customer service representatives, and "other employees earning relatively low wages." The FTC also noted the employees' lack of ability to negotiate the agreement, little opportunity to "fully consider and understand the agreement," and lack of incremental consideration for signing the agreement. The FTC determined these factors, and others, likely caused the employees lower wages, reduced benefits, less favorable working conditions, and "personal hardship."

According to the FTC, the noncompete agreements "likely suppress competition" by preventing Rollins employees from starting new small businesses that would compete in the pest-control industry. Any "procompetitive objectives," according to the complaint, did not require noncompete agreements. Instead, Rollins could have used more narrowly tailored non-solicitation agreements to protect customer relationships and client goodwill. As a result, the FTC claimed Rollins' use of the noncompete agreements at issue constituted "unfair methods of competition" in violation of Section 5 of the FTC Act. 15 U.S.C. § 45.

In a statement discussing the Rollins complaint, FTC Chairman Andrew Ferguson indicated the FTC would continue to take action against noncompete agreements that unlawfully limit worker mobility and access to job opportunities, which, in turn "deny consumers the benefits of vigorous competition."

CURRENT STATUS: ARE NONCOMPETES ENFORCEABLE IN KANSAS?

While the federal government and many states have been increasing restrictions on restrictive covenants, Kansas nears the first anniversary of Senate Bill 241, which provided Kansas businesses with additional assurances they will receive the benefit of the restrictive covenants they execute. Effective July 1, 2025, SB 241 amended the Kansas Restraint of Trade Act ("Act") with respect to non-solicitation agreements. The amendment created a **conclusive presumption** that customer non-solicitation provisions are enforceable if they are:

1. limited to material contact customers **and**
2. the restricted period does not continue for more than two years following the end of the employee's employment (K.S.A. 50-163(c)(5)).

Employee non-solicitation provisions are enforceable if they are:

1. for the protection of confidential or trade secret information **or**
2. if they do not continue for more than two years following an employees' employment (K.S.A. 50-163(c)(4)).

SB 241 provided similar assurances to business owners in connection with the sale and purchase of business entities. The amended Act created a conclusive presumption that non-solicitation agreements are enforceable if they are limited to no more than four years following the business owner's involvement in the business entity, and for customer non-solicitation agreements, if they are limited to material contact customers (K.S.A. 50-163(c)(2)-(3)).

As amended, the Act expressly requires courts to modify any covenant found to be overbroad and directs courts to enforce the covenant as modified to protect the interests of the parties. Prior to SB 241, judicial reformation of overbroad covenants was permissible. Under the amended Act, judicial reformation is mandatory.

FOR MORE INFORMATION

If you have questions or want more information regarding the use of restrictive covenants, contact your legal counsel. If you do not have regular counsel for such matters, Foulston Siefkin LLP would welcome the opportunity

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to work with you to meet your specific needs. For more information, contact Scott C. Nehrbass at 913.253.2144 or snehrbass@foulston.com or Sara O'Keefe at 913.253.2149 or sokeefe@foulston.com. For more information on the firm, please visit our website at www.foulston.com.

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