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AG Schwalb Leads 18 Attorneys General Supporting US Federal Trade Commission Rule to Ban Workplace Non-Competes

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April 19, 2023

Coalition Emphasizes How Rule Will Benefit Workers, Businesses & Economy

WASHINGTON, DC – Attorney General Brian L. Schwalb today led 18 Attorneys General in submitting a comment in support of the United States Federal Trade Commission’s (FTC) proposed rule banning workplace non-competes. The comment discusses how non-compete clauses harm workers, businesses, and the economy, and how the lack of a clear national prohibition on non-compete clauses undermines individual states’ efforts to address these harms and interferes with interstate commerce.

The coalition includes states with and without legislation on non-compete agreements. The comment provides specific examples from the states’ diverse experiences and stresses the need for a uniform federal rule. The comment builds on OAG’s prior national leadership in submitting multistate letters to the FTC in 2019 and 2020 to urge action on non-competes.

“The FTC’s proposed rule will not only benefit workers, but employers, businesses and the economy as a whole,” said AG Schwalb. **“The research is clear: non-competes are anticompetitive. They restrain worker mobility and depress wages, with especially adverse effects on low-and middle-income workers, while simultaneously stifling entrepreneurship and innovation. A uniform, national approach to non-competes will provide much-needed clarity and alleviate current confusion caused by the patchwork of state-level approaches.”**

A non-compete is a contractual provision that frequently prevents employees from taking a new job or starting their own business, often in a particular industry or geographic area. Even though the law construes them narrowly, non-competes have proliferated across industries and today cover workers across all income levels and sectors, including health care, technology, and fast food. Non-competes, even if not legally enforceable, deter employees who lack the resources to litigate against their employers from seeking better job opportunities, and they disproportionately harm women and people of color. Yet non-competes are unnecessary: employers have other, more narrowly tailored ways to protect proprietary information, including non-disclosure agreements.

In their comment letter to the FTC, the Attorneys General argue that:

- **A federal rule limiting non-competes will significantly benefit workers – especially low-and-middle-wage workers – and promote fair competition among businesses.**
 - The positive impact of the proposed rule on workers is supported by a substantial body of academic research showing that where states pass laws banning or limiting non-competes, workers of all income levels benefit from increased wages and job mobility, while gender and racial wage gaps significantly decrease.
 - The proposed rule will benefit businesses and the economy as a whole, as research shows that states with a higher prevalence of non-competes experience lower levels of entrepreneurship and startup activity, and reduced research and development investment, compared to other states.
- **Distinctions in state approaches to non-competes further support the implementation of a uniform federal protection against non-competes.**
 - The proposed rule would promote interstate commerce, which is currently complicated by variations and inconsistencies in state law, by providing uniform clarity to workers and businesses regarding the validity of non-competes.
 - The rule would also address the challenges posed by multi-state labor markets, where a state that restricts non-competes will not see the full benefit of its regulations unless all states sharing the labor market enact equivalent restrictions.

A full copy of the comment letter submitted to the FTC is available [here](https://oag.dc.gov/sites/default/files/2023-04/2023.04.19%20State%20AGs%20FTC%20Comment%20-%20Final.pdf) (https://oag.dc.gov/sites/default/files/2023-04/2023.04.19%20State%20AGs%20FTC%20Comment%20-%20Final.pdf).

The comment was led by the Attorneys General of the District of Columbia, New Jersey, and California and joined by the Attorneys General of Colorado, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Mexico, New York, Oregon, Pennsylvania, Rhode Island and

Washington.

The comment letter was handled by Assistant Attorneys General Sarah Levine and Will Margrave, under the supervision of Assistant Section Chief Randy Chen and Section Chief Adam Gitlin.

Resources for District Workers About Non-Competes

The FTC's proposed rule is not yet final and is subject to change after the conclusion of the comment period. However, District law currently provides many District workers with protection from non-competes. More information about this District law can be found [here \(https://oag.dc.gov/blog/worker-alert-noncompete-provisions-are-now-illegal\)](https://oag.dc.gov/blog/worker-alert-noncompete-provisions-are-now-illegal). Workers who have experienced problems with non-competes, wage theft, or other wage-and-hour violations can contact OAG by phone at **(202) 727-3400** or by email at [workers@dc.gov \(mailto:workers@dc.gov\)](mailto:workers@dc.gov).

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