

New Jersey Co-leads Letter Supporting Federal Trade Commission's Proposed Rule Limiting Non-Competes in Employment

For Immediate Release: April 19, 2023

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NEWARK – Attorney General Matthew J. Platkin today announced that New Jersey is co-leading a multi-state letter with the District of Columbia and California in support of the Federal Trade Commission's proposed rule that would eliminate non-compete clauses in employment contracts in most circumstances.

In a letter sent today to Federal Trade Commission Chair Lina Khan, Attorney General Platkin joined the District of Columbia Attorney General Brian Schwalb and California Attorney General Rob Bonta in co-leading a group of 18 Attorneys General supporting the proposed national rule.

In January the FTC proposed the Non-Compete Clause Rule, which would bar employers from preventing workers from working for or starting a competing business within a certain time period after leaving a job. Approximately 18 percent of labor force participants were bound by non-competes in 2014, and 38 percent had agreed to one in the past, usually because employers insisted on them, and employees lacked a meaningful ability to negotiate them. The proposed rule concludes that non-competes are an unfair method of competition which can depress worker wages, reduce racial and gender equality in workplaces, and create legal hurdles for employees looking to grow their careers. Currently, the legality of such noncompete agreements is left to the states, creating confusion for workers and distorting labor markets that cover more than one state.

“I applaud the Federal Trade Commission's step towards limiting non-compete clauses in the workplace,” **said Attorney General Platkin.** “Employees deserve to move to new jobs or start their own businesses as their careers develop. The proposed national rule would allow for greater competition and fairness in the marketplace as businesses will have to find better ways to keep talented workers than the yoke of a non-compete clause.”

Low and middle-wage workers would benefit the most from this proposed rule, with a high potential for increases in wages and job mobility. The proposed rule would also promote gender and racial equity, as studies have found that non-compete clauses cause women and non-white

workers to see earnings reductions two times greater than that experienced by white male workers. The states also note that the elimination of non-competes would benefit business and the economy as a whole, as non-competes restrict entrepreneurship and start-up activity.

The states also argue that the rule will particularly improve conditions in the healthcare industry, which is becoming increasingly concentrated in fewer employers in the United States. Non-competes are widely used in the healthcare industry and restrict entry of health care workers into their employment market, which inflates prices and decreases wages.

The states support the FTC's definition of "non-compete clause," support the Commission's broad definition of "worker," and urge the Commission to clarify that the proposed rule does not overtake similar laws at the state level that provide similar or greater protections.

Attorneys General Platkin, Schwalb, and Bonta were 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 State is represented by Deputy Attorneys General Leslie Prentice of the Consumer Fraud Prosecution Section and Marcus Mitchell of the Labor Enforcement Section in the Division of Law's Affirmative Civil Enforcement Practice Group under the supervision of Assistant Attorney General Mayur Saxena, Deputy Director Jason W. Rockwell, and Director Michael T.G. Long.

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