



Insight

Assessing the Promising Labor Policies in the President's Executive Order

ISABEL SOTO | JULY 13, 2021

Executive Summary

- President Biden's executive order, "[Promoting Competition in the American Economy](#)" includes two key initiatives that could help workers, occupational licensing reform and reducing or eliminating non-compete agreements.
- Both initiatives have the potential to increase wages and lead to greater labor mobility by removing barriers to entry, but federal policymakers should be cautious given that states are the primary actors on these issues.
- If not addressed correctly, efforts to improve licensing regulations and non-compete agreements could have negative consequences on small businesses and workers.

Introduction

President Biden's latest executive order (EO) on "[Promoting Competition in the American Economy](#)" includes 72 different initiatives that aim to increase competition and wages through the coordination of 12 agencies. [Analysis at the American Action Forum](#) has assessed these different initiatives and found that the overall effects of the EO on market outcomes are mixed. The labor provisions specifically give cause for optimism. Occupational licensing reform and addressing the challenges that non-compete agreements pose for workers mark a positive step when it comes to broadening worker choices and flexibility in the labor market. In the case of both occupational licensing and non-compete agreements, the Biden Administration is calling upon an independent agency, the Federal Trade Commission, to take on policies that have typically been left to state discretion. As a result, if these issues are not addressed carefully, federal efforts could undermine small businesses and lead to complex and costly litigation that hurts workers and companies alike.

Occupational Licensing

Occupational licensing reform has been gaining traction as a [bipartisan policy](#) area where policymakers can help workers contribute to the labor force by removing unnecessary barriers to entry. Over the past 60 years the jobs requiring a [license or government approval](#) have increased from 5 percent to over 25 percent, with significant variation state by state. Originally licensing regulations were created in the interest of public safety to mitigate risks that could come from inexperienced workers. Now, however, licensing covers a significant part of the labor force and has come to include occupations that do not affect public safety such as hair braiding and fortune telling.

Occupational licensing prevents more workers from entering those regulated jobs, and it specifically harms those who may already have difficulty obtaining jobs in the first place. Low-wage workers and military families are significantly affected by occupation licensing restrictions, the former due to the sheer cost of attempting to work in a highly regulated industry and the later due to the mobility that often comes with military life.

The Biden Administration's EO seeks to ease the regulations surrounding licensing in some occupations. The intent of this initiative is not the problem; the challenge lies in its execution. The EO "encourages the FTC to ban unnecessary occupational licensing restrictions that impede economic mobility." This is easier said than done. Given the nature of occupational licensing, such a ban may require the FTC to go through each licensing requirement in each state to determine "necessity" on a case-by-case basis, potentially superseding state authority to implement national standards. Legislators must also keep in mind the burden that rapidly changing requirements could have on small businesses. While it is true that occupational licensing requirements have been shown to [create barriers to employment and increased costs to consumers](#), the administration cannot simply implement federal legislation to fix these problems. States have been the primary actors on this issue and will likely remain so despite this latest executive order.

Non-Compete Agreements

The use of non-compete agreements is widespread in the private sector, with [half of private sector businesses](#) using them for at least some of their employees. This type of contract is an employment agreement that prevents the worker in question from taking a job with an employers' competitor. The length of time that these agreements cover varies by state, industry, and role, but typically agreements exceeding [two years](#) are deemed unreasonable and therefore unenforceable. The rationale behind these agreements is that they protect proprietary firm information. In addition, they also protect the investment a company has made in a worker such as training. They further serve employers in that they help a company retain the best talent without needing to be concerned about a competitor poaching workers.

Currently bans to non-compete agreements are in [only a few states](#), notably California, North Dakota, and Oklahoma. Several others limit bans to low-wage workers. Similar to occupational licensing, there is not a comprehensive federal standard surrounding non-compete agreements, and it remains unclear what form a federal-level ban could take. Banning non-compete agreements would likely increase worker's autonomy in that doing so would allow them to bargain more effectively for higher wages and increase worker mobility. The difficulty, however, is identifying the affected workers and mitigating costs to small businesses.

Without understanding small business concerns about this kind of policy change, non-compete bans could make it much harder for small businesses to compete – the exact the opposite of the EO's intent. An all-out ban of non-compete agreements would bring significant challenges to small businesses and, from the employer's point of view, put confidential information at risk. By banning non-compete agreements, businesses would need to turn to trade secrets misappropriation laws to protect their information. This complex and costly litigation is possible for large and highly profitable companies but would leave smaller competitors without much recourse.

Conclusion

Occupational licensing reform and banning non-compete agreements all seem like pro-free market and pro-worker ideas. The success of these measures will come down to specifically how they are executed. As more details emerge from specific agencies, it will become clearer how much of a pro-competition effect these initiatives could have.