

Press Release



Proposed FTC Rule Banning Noncompete Agreements Oversteps Agency Authority

PAULINA ENCK | JANUARY 12, 2023

Following an executive order from President Biden, the Federal Trade Commission (FTC) proposed a rule barring employers from entering noncompete agreements with employees, as well as nullifying existing agreements, claiming these employment contracts represent an unfair method of competition. In a new insight, Competition Economics Analyst Fred Ashton examines the proposed rule and discusses the various legal challenges it could face.

Key points:

- The rule is expected to be challenged on several legal grounds, including whether the FTC has the legal authority to engage in rulemaking with respect to unfair methods of competition and the major questions doctrine, recently strengthened by the Supreme Court in *West Virginia v. EPA*.
- Proposed federal legislation and active state legislatures are already adequately addressing some of the labor market inefficiencies resulting from noncompete agreements.
- The newly minted Congress should ensure adequate oversight of the FTC's latest attempt to push the bounds of its enforcement authority beyond the agency's traditional and legal purview.

[Read the analysis](#)