



SELBY JENNINGS

PART OF PHAIDON INTERNATIONAL

2024

COMPENSATION GUIDE

The FTC Non-Compete Ban

A guide for businesses on what the ruling means
for financial sciences & services organizations



Introduction

The Federal Trade Commission's recent ruling banning non-competes could dramatically alter talent retention and competition, with significant implications for hiring managers and organizations like yourself.

According to the CFO¹, the FTC's new rule, effective September 4, 2024, prohibits companies from using non-compete agreements for most workers anymore, except for senior executives. Employers have to tell their workers that these agreements aren't enforceable anymore, with the FTC providing example language to aid compliance of the ruling.

While we wait for whether this change will be allowed to take effect here we cover some of the challenges and opportunities the FTC ruling has thrown up that may affect 30 million Americans, as well as offering insights and advice on how this news may impact the workforce, and businesses, of tomorrow.

It's important for businesses to remember this ruling does not apply to all. It will not be universal across all industries, and certain sectors such as banks, specific nonprofits like healthcare providers, and stockyards will be exempt from compliance.

Another exception is for non-compete agreements already established with company CEOs, presidents, and senior business executives who hold "policy making" authority and earn more than \$151,164 annually. Companies are also protected in the event that they are sold.

The benchmark pay is based on total compensation, which can include salary commissions, non-discretionary bonuses and other non-discretionary compensation.

The ruling states that workers must earn more than the benchmark threshold and be in a policy-making position. So for individual contributors with a non-compete, it would be typically unenforceable.





Three Challenges Businesses Must Address

1 RETAINING TALENT

Compensation, including bonuses, plays a crucial role, especially in markets like Wall Street. Although the end of 2023 witnessed a slowdown in bonuses across the board, they remain a top priority for many employees and significantly impact their overall job satisfaction. According to the **Selby Jennings 2024 bonus survey**, over 50% of respondents stated that their current bonus doesn't keep them motivated, while 85% indicated that a higher bonus would tempt them to accept a new offer. Employers must prioritize retaining their talent by ensuring their employees feel valued and content in their current roles.

To prepare for potential changes, Ben Hodzic, Managing Director of Selby Jennings USA believes:

“Employers should analyze employee satisfaction and address any discontent to avoid a mass exodus if a ban on certain compensation practices is enacted.

“This analysis should also ensure the firm maintains a competitive edge in the marketplace by offering attractive benefits, comprehensive PTO policies, and competitive maternity leave benefits. Additionally, employers should review and enhance their compensation packages to make them more appealing and competitive, potentially incorporating deferred compensation and clawbacks to discourage employee turnover.”

Despite uncertainties in the financial world, employees and employers alike are recognizing the value of their current positions. Economic instability has made many employees hesitant to seek new opportunities, resulting in a tight talent market. While this ruling may impact mobility in the market, the best candidates, if they decide to leave, will not stay on the market for long regardless. This emphasizes the importance of showing appreciation for valuable employees and taking proactive steps to retain them.





Three Challenges Businesses Must Address

2 SAFEGUARDING INFORMATION

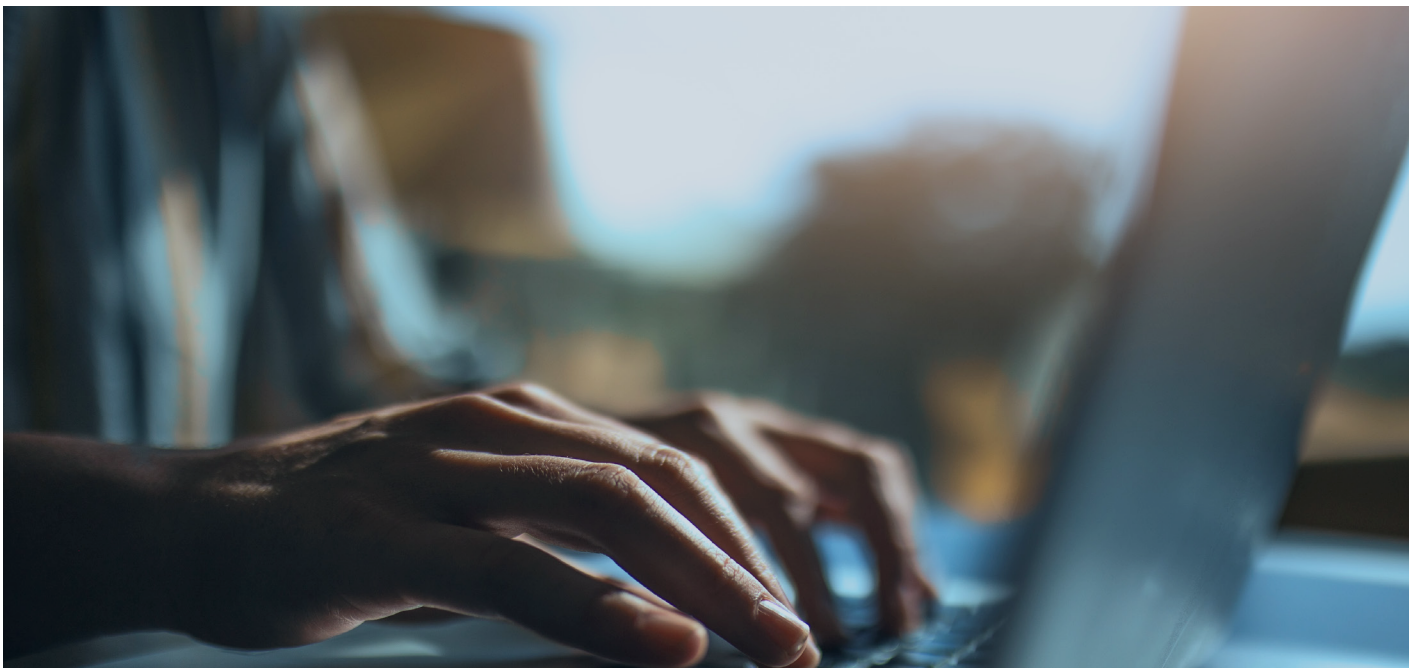
Historically non-competes have been utilized as a tool to safeguard valuable information, preventing talent from moving to competitors and taking ideas, contacts, customers and R&D with them. Such agreements can specify certain durations of time or geographies, tailored to suit an organization best. With the FTC ruling, companies may be concerned that such sensitive knowledge or client relationships are at risk.

Companies can use a non-disclosure agreement (NDA) and increase intellectual property (IP) clauses in employment contracts as a protective measure for confidential information to counter the lack of non-competes in the future. Additionally, various provisions can be incorporated into an

employee's contract to further safeguard sensitive information. Proving unauthorized disclosure of confidential information, especially concerning client relationships rather than specific research and development or projects, can be challenging and raises the questions of where litigation is even a viable option.

Therefore, firms must foster an environment where employees understand the sensitive nature of their roles and respects your organization's information. Employers should conduct an audit of policies and procedures designed to protect confidential data and information and develop training, update employment agreements, and create onboarding and offboarding protocols to protect trade secrets.

Under federal or state trade secret laws, former employees could be stopped from using or disclosing employer trade secrets. In some financial services roles, such as quants, traders, or software engineers exposed to proprietary trading strategies, this is going to be an important topic of conversation. Some states allow claims based on inevitable disclosure, whereby an employee is performing the same role for a competitor and therefore it is inevitable that they will rely on their previous experience, even if unintentionally. Employers may be able to prevent employees from working for a competitor under this area, but it is murky and hasn't been put into effect yet as the FTC ruling is not near implementation yet.





Three Challenges Businesses Must Address

3 FURTHER REGULATIONS & COSTS

While the US Chamber of Commerce is challenging the existing ruling in court as it alleges the FTC has overstepped its authority, there are concerns that the FTC will continue with its scrutiny further. Companies have to inform those under past non-competes that the ban is retroactive, and while presently the new law doesn't cover senior executives, that could easily change in the future.

Organizations should monitor any legal challenges and potential litigation due to this ruling. They should also consider bolstering their own in-house general counsel or legal talent to advise on this ruling, plan for notices, and update existing agreements. Selby Jennings recommends working with expert regulatory & legal talent partners Larson Maddox – as part of Phaidon International, together Larson Maddox and Selby Jennings can assist with your financial services and regulatory & legal talent requirements.

Adhering to further regulations may also cause businesses to worry about the financial burden associated with compliance costs. The implementation of new regulations often requires companies to invest resources in adjusting their operations, training staff, and updating systems to ensure compliance. These costs can be particularly burdensome for small and medium-sized enterprises (SMEs), which may have limited resources to allocate to regulatory compliance. Additionally, the fear of fines and penalties for non-compliance adds to the financial strain on businesses, as well as the fact that you may have invested in a workforce that could easily leave.





Three Potential Benefits to Businesses

1 THE ABILITY TO ATTRACT MORE TALENT

While some professionals view non-competes as a way to prevent competitors from poaching them, this approach may not align with the modern workforce's preferences. It could be the case that employees who feel valued and appreciated by their employers are more likely to stay loyal to their current company, regardless of the presence of a non-compete agreement. By fostering a culture of appreciation and recognition, businesses can create an environment where employees are motivated to stay for reasons beyond legal constraints.

Removing non-compete agreements could also foster a more competitive job market. Employees will have the freedom to explore new opportunities and bring their skills and experiences to different companies. This increased mobility could lead to a more efficient allocation of talent across industries, as individuals are free to pursue roles that align with their career aspirations and interests.

Consequently, businesses may need to offer more attractive compensation packages and opportunities for career advancement to retain their top performers, **as Ben explains:**

“Companies should begin altering and thinking through new, more comprehensive, and competitive compensation packages. Effectively businesses should be sweetening the deal to encourage someone to join, and to stay. They should also ensure they really understand what is actually considered competitive in this marketplace.”

There also could be more talent looking to move, and therefore more competition amongst candidates on the market to drive down compensation long term.

Under the current guidelines and burden of non-competes, companies have had to get more creative with their hiring strategies. Sometimes they can think outside the box and fit a square peg in a round hole as such, to secure a talented candidate who can start quickly, or they have hired candidates who are simply “good” then find a role for them later. With the proposed FTC changes, companies can attract candidates who are perfectly relevant or doing the job elsewhere and put them into the perfect role right away with a much shorter turnaround time. That’s something both hiring managers and candidates will look forward to.





Three Potential Benefits to Businesses

2 INCREASE INNOVATIONS

Without non-compete agreements, employees will have the freedom to explore new opportunities and bring their skills and experiences to different companies. This increased mobility encourages knowledge-sharing and collaboration across organizations, which could lead to a cross-pollination of ideas and expertise. Driving innovation and industry growth will benefit businesses and the economy as a whole.

Non-compete agreements are banned in some states already, including California, and some proponents of a non-compete ban argue that Silicon Valley and California's status as the tech capital of the world wouldn't exist without the state allowing for more worker mobility. Is keeping people from innovating and from leaving companies to start their own good for the overall US economy is the question? California, Minnesota, North Dakota and Oklahoma have full bans on non-compete agreements. Nine states and D.C. have restrictions on non-competes based on an employee's income level.

Additionally, the absence of non-compete agreements can attract entrepreneurial-minded individuals to your firm who are more inclined to take risks and drive innovation within their industries. By embracing a culture of openness and collaboration, companies can attract top talent who are eager to contribute to innovative projects and initiatives.





Three Potential Benefits to Businesses

3 HIRE FASTER

Many non-compete agreements come with a transition period for employees, prohibiting from working for the competition or themselves during this time. While some businesses believe gardening leave benefits them by preventing employees from taking current and sometimes sensitive information or clients with them when they leave, especially when joining a competitor, it also limits businesses on being able to onboard talent they also need.

If you are a business looking to quickly bring on talent from rival firms, a non-compete ban could be incredibly beneficial. You will be able to identify suitable candidates faster and extend job offers swiftly, reducing the time it takes to fill crucial positions.

“Companies as a result may see higher productivity levels and as a result, better performance and revenue. Getting more people back into work quicker, as opposed to them sitting on the sidelines, can only be good for the US economy as well,”

explains Jesse Skaff, Global Client Director and Head of Financial Services at Phaidon International, the parent company of Selby Jennings.

Without the need for complex negotiations and legal agreements regarding non-compete clauses, onboarding talent will also be quicker and therefore businesses streamline their hiring process.





Summary

As an ever-evolving news story, it's crucial to remain informed about the FTC's ruling potential impact. At the time of publishing, we are already awaiting the outcome of pending litigation. While the ruling has not yet been tested, the US Chamber of Commerce's intention to sue adds to the uncertainty surrounding the issue. It's worth noting once more that senior talent although excluded right now may still be affected by alterations to non-compete regulations.

However, amidst these challenges and changes, it's important to remember that while laws may be beyond our control, the benefits, compensation, and environment cultivated by businesses, is not. By focusing on creating an attractive work environment and providing competitive benefits and compensation packages, companies can continue to attract and retain top talent, despite potential changes in non-compete regulations.

During this uncertainty, you can benefit from specialist guidance from Selby Jennings. Keeping you informed about relevant regulatory changes while offering access to a wide network of qualified candidates, we assist organizations in developing effective talent retention strategies to help businesses create attractive work environments and competitive compensation packages. By leveraging the expertise of Selby Jennings, businesses can navigate the challenges posed by the FTC ruling and ensure their talent requirements are met.





About Selby Jennings

We support the financial sciences & services industry with talent that can truly shape the future of a business.

Whether that be quantitative analytics, research & trading professionals developing complex financial models to improve a firm's bottom line, or investment management specialists leading the charge on sustainable investments and greener assets to make an impact, we are here to build the right team for you, and have been doing so for nearly 20 years.

As an award-winning talent partner working with the world's largest financial institutions to revolutionary fintech start-ups with all their hiring needs, we have developed relationships with the brightest and boldest minds in banking and finance, and deliver this talent to leading, innovative organizations around the world.

OUR SPECIALISMS

- Quantitative Analytics, Research & Trading
- Risk Management
- Financial Technology
- Actuarial Science
- Compliance
- Investment Banking
- Investment Management
- Internal Controls
- Sales & Trading
- Wealth Management





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Head of Financial Services

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* This document was created on 5/21/2024, and the information provided is based on the knowledge available at that time. As this is a fast-moving news story, the details and developments may have changed since the document was created. Readers are advised to verify the latest updates and it is strongly advised that you seek independent legal advice before making any decisions or taking any actions based on the information provided herein. This information is not intended to constitute legal advice, and we make no representations or warranties regarding its accuracy, completeness, or applicability to your specific situation. Laws and regulations vary by jurisdiction and can change over time. Therefore, it is crucial to consult with a qualified legal professional who can assess your individual circumstances and provide tailored advice. By accessing or using this information, you acknowledge that we are not liable for any loss or damage resulting from reliance on it.

1. [https://the-cfo.io/2024/04/30/what-you-need-to-know-about-the-ftcs-ban-on-non-competes/#:~:text=FTC's%20final%20rule%20bans%20non,significant%20implications%20for%20CFOs'%20strategies.&text=The%20Federal%20Trade%20Commission%20\(FTC,particularly%20affecting%20non%2Dcompete%20clauses](https://the-cfo.io/2024/04/30/what-you-need-to-know-about-the-ftcs-ban-on-non-competes/#:~:text=FTC's%20final%20rule%20bans%20non,significant%20implications%20for%20CFOs'%20strategies.&text=The%20Federal%20Trade%20Commission%20(FTC,particularly%20affecting%20non%2Dcompete%20clauses)

