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ALERT

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Non-Competition Agreements and the Lack of a Uniform Approach Adversely Impact Employers and Employees

By: Brian C. Daughney and Alexander Tomaro

The Federal Trade Commission ("FTC") and Rollins, Inc. ("Rollins"), one of the nation's largest pest-control companies, recently issued a proposed consent order by which Rollins agreed to stop enforcing non-compete agreements against more than 18,000 employees nationwide. The FTC also issued warning letters to 13 other pest-control companies that collectively employ thousands of additional workers, urging them to review their employment agreements for non-compete provisions that may be unfair or anticompetitive.

Why can't employers and employees obtain some uniformity in the approach to non-competition agreements?

In April 2024, the Federal Trade Commission announced a final rule intended to address the widespread use of non-competition agreements for workers at all levels of employment. In its press release announcing the rule, the FTC stated that it had determined that, in general, non-competition agreements across all levels of employees were an unfair method of competition, and therefore a violation of Section 5 of the FTC Act. So, employers could not enter into broad based non-compete agreements with workers or to enforce certain existing non-competes. If implemented, the rule would arguably have created a national standard governing the enforceability of non-competition agreements.

The rule was not adopted unanimously as several FTC Commissioners objected. In a dissenting statement, Commissioner Andrew N. Ferguson, joined by Commissioner Melissa Holyoak, argued that the rule was constitutionally invalid and that non-competition agreements had long been evaluated under a "multifactor reasonableness test." See Dissenting Statement of Commissioner Andrew N. Ferguson, joined by Commissioner Melissa Holyoak, In the Matter of the Non-Compete Clause Rule, Matter No. P201200, June 28, 2024.

According to Commissioner Ferguson, state courts traditionally considered four factors in determining whether a non-competition agreement was enforceable. First, the agreement had to be "ancillary" to another valid agreement, such as an employment agreement or

agreement for the sale of a business. Second, the restraint had to be "no greater than is required to protect" the promisor. Third, the restraint could "not impose undue hardship on the promisor." Finally, the restraint could not be "injurious to the public."

The FTC announced on September 5, 2025 that it would no longer pursue appeals seeking to preserve enforcement of the 2024 rule banning most non-competition agreements. Then, on February 12, 2026, the FTC published a final rule removing the Non-Compete Rule from 16 CFR part 910 to conform to the vacatur.

What can employers learn from the Rollins action? Does it provide certainty regarding the use and enforceability of Non-Compete Agreements?

According to the FTC's complaint, Rollins required nearly all of its employees to sign non-compete agreements, regardless of their position, job duties, compensation level, or access to confidential information. These agreements generally prohibited employees from working in the pest-control industry for two years after leaving Rollins. They also typically restricted former employees from working within a designated geographic area, often a 75-mile radius of any of Rollins' more than 700 locations across the United States.

The FTC took issue with Rollins' broad use of non-competes, particularly because the restrictions applied not only to senior executives or employees with access to sensitive business information, but also to frontline and lower-wage employees, including technicians and customer-service personnel. The FTC alleged that employees had little ability to negotiate these agreements, received no additional compensation for signing them, and often did not fully understand the practical consequences of the restrictions.

Key Concerns with Non-Compete Agreements; What Should an Employer do Now?

The Rollins action does not answer questions under state law about the enforceability of non-competition agreements. Employers and employees will still need to struggle with the laws of the states in which they operate, and for large entities that could be involve many states. On a federal level, the Rollins consent order highlights several issues employers should consider when using non-compete agreements.

First, employers should avoid one-size-fits-all restrictions. Non-competes that apply broadly to virtually all employees, regardless of their responsibilities or access to sensitive information, may be vulnerable to challenge and may draw regulatory scrutiny.

Second, non-compete restrictions should be narrowly tailored in both duration and geography. Employers should ensure that any restriction is reasonably connected to the

employee's role, territory, customer relationships, or access to protectable business information.

Third, employers should consider whether less restrictive alternatives can adequately protect their interests. Confidentiality agreements, trade-secret protections, and narrowly drafted non-solicitation provisions may address legitimate business concerns without imposing the broader competitive restraints associated with non-compete agreements.

We have a few recommendations:

- Employers with broad, standardized non-compete programs should review their agreements carefully, particularly where those agreements apply to lower-wage employees, frontline workers, or employees who do not have access to trade secrets, confidential information, or significant customer relationships.

- Before relying on non-compete restrictions, employers should evaluate whether their interests can be protected through less restrictive means, such as confidentiality agreements, non-solicitation provisions, invention-assignment agreements, or trade-secret protections.

- The restrictions in a non-competition agreement should be limited in scope, duration, and geography, and should be tied directly to the specific business interest the employer seeks to protect. Employers should avoid blanket non-compete requirements that apply to all, or nearly all, employees without regard to their actual role, access to sensitive information, or relationship with customers.

These same considerations and recommendations are similar to the considerations that would be applicable on a state level.

If you have any questions regarding the matter raised in this Alert, please feel free to contact either Brian Daughney at bdaughney@moritthock.com or Alexander Tomaro at atomaro@moritthock.com.

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