



# Freedom Network USA

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Shannon Lane  
Attorney, Office of Policy Planning  
Federal Trade Commission  
600 Pennsylvania Ave. NW, Ste. CC-5610 (Annex C)  
Washington, DC 20580

## **RE: Non-compete Clause Rulemaking, Matter No. P201200**

Dear Ms. Lane:

Freedom Network USA (FNUSA) commends the Federal Trade Commission (FTC) for seeking to ban non-compete clauses for virtually all workers. The FTC's proposed rule is squarely within its legal authority to promulgate. The rule will help all workers, contributing to higher wages, and greater opportunities for workers to rise in their fields by switching jobs. These benefits will, in turn, become an essential human trafficking prevention measure by ensuring vulnerable workers will be able to leave exploitative jobs.

FNUSA is the nation's largest coalition of service providers and advocates working directly with human trafficking survivors in the United States. We are committed to the human rights-based approach to human trafficking, placing a trafficked person's priorities and narrative at the center of anti-trafficking work. Our 92 members include survivors, civil attorneys, criminal attorneys, immigration attorneys, and social service providers who have assisted thousands of trafficking survivors.

Like other legal mechanisms implemented under the assumption of protection for businesses, exploitative employers use non-compete agreements to prevent workers from leaving abusive jobs. The removal of legal mechanisms that hand over tools for coercion to abusive employers is an essential step toward preventing human trafficking and other forms of labor exploitation. Our detailed comments about protecting trafficking survivors and preventing trafficking through banning non-competes are below.

### **1. Non-compete agreements prevent workers from changing jobs when they are mistreated and depress wages**

Non-compete agreements are often presented in a "take it or leave it" fashion, forcing workers to sign the agreement or reject the job. Workers who face economic insecurity face more pressure to sign the non-compete than wealthier workers. While non-compete clauses are included in employment contracts for both high-wage and low-wage workers, the latter are less likely to have the power or ability to negotiate terms, fully understand the terms presented, or to obtain legal assistance in negotiating their contract. In fact, many low-wage workers are not aware they have signed a non-compete agreement until they are informed by the company's attorneys while looking for or after obtaining a new job.<sup>1</sup> Non-compete clauses can force

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<sup>1</sup> Sophie Quinton, *Why Janitors Get Noncompete Agreements, Too*, Pew Trusts, May 17, 2017, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/05/17/why-janitors-get-noncompete-agreements-too>

workers to choose between staying at an exploitive job and receiving some income, or becoming unemployed and facing poverty.

Non-compete agreements can also trap immigrants and temporary migrant workers in jobs with abusive employers. Many migrant workers have visas that are tied to their employer. If that employer is abusive or threatens the worker with deportation, a non-compete may prevent the worker from finding safe work with another employer. It essentially forces the worker to choose between working in the US or being deported and unable to feed their family.

Non-competes have also been shown to repress wages for entire fields by reducing competition and allowing bad actors to continue to pay non-living wages to workers.<sup>2</sup>

Implementing the proposed rule will not only reduce barriers to leaving exploitive jobs, but also raise the standard wages for the most vulnerable workers. Economic studies of states that have banned or limited non-competes have found average hourly wage increases of at least 2 to 3 percent.<sup>3</sup> These reflect the FTC's assessment that a ban on non-compete agreements will raise total earnings by \$250 billion per year for workers in the United States.

## **2. Non-compete agreements harm workers of color, women, and survivors of human trafficking**

The use of non-competes for underpaid workers creates and worsens vulnerabilities to human trafficking and other forms of labor exploitation. Non-competes exacerbate racial and gender wage gaps, by establishing unequal and predatory power dynamics and limiting workers' rights.<sup>4</sup> Workers of color, women, and survivors of human trafficking are more likely to face the detrimental impacts of non-competes when seeking safe and well-paid employment. Women and workers of color are less likely to negotiate, and they face larger penalties than white men.<sup>5</sup> When non-competes are more strictly enforced, women and workers of color's wages are reduced by twice as much as white male workers.<sup>6</sup>

Independent contractors are also placed into a more vulnerable position by non-compete clauses. Many survivors of human trafficking seek out gig work due to structural and legal barriers faced or a preference for a self-chosen work schedule after leaving a trafficking situation.<sup>7</sup> In addition, women and workers of color are disproportionately impacted by independent contractor misclassification. The use of non-competes for independent contractors prevents workers from receiving a livable income for work in their specialty and furthers harm

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2 Marshall Steinbaum, *How widespread is Labor Monopsony? Some New Results Suggest its Pervasive*, Roosevelt Institute, December 18, 2017, <https://rooseveltinstitute.org/2017/12/18/how-widespread-is-labor-monopsony-some-new-results-suggest-its-pervasive/>; Greg Robb, *Wage growth is soft due to declining worker bargaining power, former Obama economist says*, Marketwatch, August 24, 2018, <https://www.marketwatch.com/story/wage-growth-is-soft-due-to-declining-worker-bargaining-power-former-obama-economist-says-2018-08-24>

3 Michael Lipsitz and Evan Starr, *Low-Wage Workers and the Enforceability of Noncompete Agreements*, *Management Science*, April 5, 2021, <https://pubsonline.informs.org/doi/10.1287/mnsc.2020.3918>

4 John W. Lettieri, *Noncompete Agreements and American Workers – Testimony before the Senate Committee on Small Business*, Economic Innovation Group, Nov. 14, 2019, <https://eig.org/news/testimony-before-the-senate-committee-on-small-business-noncompete-agreements-and-american-workers>

5 Tom Fleischman, *Women Indirectly Hurt More by Noncompete Pacts*, Cornell Chronicle, October 5, 2021, <https://news.cornell.edu/stories/2021/10/women-indirectly-hurt-more-noncompete-pacts>

6 Matthew Johnson, Kurt Lavetti, & Michael Lipsitz, *The Labor Market Effects of Legal Restrictions on Worker Mobility*, June 6, 2020, <https://ssrn.com/abstract=3455381>

7 National Survivor Network, *The National Survivor Network's Input on the Proposed Rule on Noncompete Clauses*, March 1, 2023, [https://nationalsurvivornetwork.org/wp-content/uploads/2023/03/2023\\_NSN-Comments\\_-\\_Noncompete-clause-ban.pdf](https://nationalsurvivornetwork.org/wp-content/uploads/2023/03/2023_NSN-Comments_-_Noncompete-clause-ban.pdf)

from employers who misclassify workers to reduce labor protections. This results in inconsistent and unstable work and makes it harder for contractors to maintain or achieve economic stability. The ban should be extended to independent contractors.

For survivors of trafficking, achieving economic stability is difficult. There are few resources available for meaningful workplace development, accommodations for health issues stemming from a trafficking experience, or options for upward mobility. The National Survivor Network, a survivor-led professional membership network for survivors of human trafficking, submitted comments for this proposed rule based on member experiences that should be referenced to understand the extensive impacts of non-compete clauses on trafficking survivors' ability to maintain income security and stay in safe jobs.<sup>8</sup>

### **3. Support for the rule as written but considerations for enforcement**

FNUSA supports finalizing the Proposed Rule as written. The ban on non-competes will reduce limits to workers' job mobility, create opportunities for better pay and safer work, and remove one of many barriers to the stability survivors of trafficking face in the job market.

We hope enforcement of the rule will take into consideration some of the challenges faced by states that have implemented non-compete bans. In states where non-competes are already unenforceable, workers who do not have access to representation or knowledge of their rights will still sign the agreements. Workers with limited English proficiency, who lack access to a workers' rights organization, or who are on vulnerable work visas will sign these agreements and stay in bad jobs because they do not know they can legally leave. The new rule is essential, but will only be effective if knowledge of workers' rights, in general, and the new rule, specifically, is made widespread and accessible.

For the above reasons, we urge the FTC to finalize the rule as it is currently written, including independent contractors, and eliminate the usage of non-competes except in the specific and very narrow exceptions listed.

Sincerely,



Jean Bruggeman  
Executive Director  
Freedom Network USA

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<sup>8</sup> Ibid.