

Navigating The Noncompete Ban: HR Strategies for Protecting Employers' Interests

HR Dive | Carly Holm | May 17, 2024



The U.S. Federal Trade Commission headquarters in 2019. The agency has moved to ban noncompete agreements, effective Sept. 4, 2024. P_Wei via Getty Images

Transform this challenge into an opportunity to build a more dedicated, motivated and stable workforce, advises Carly Holm, founder and CEO of Humani HR.

The landscape of human resources and employment contracts is poised for a significant shift following the Federal Trade Commission's ban on noncompete clauses. This policy change is expected to reshape how businesses retain talent — and protect their assets.

HR leaders, especially in those sectors driven by innovation and competition, need to reassess their strategies to navigate this new terrain.

Understand the challenge

The ban on noncompete agreements marks a fundamental change in how businesses can safeguard their interests and, according to recent data, may affect nearly half of employers. Traditionally, noncompete clauses have been a tool for employers to limit the ability of

employees to join competing firms immediately following their departure from an organization. The absence of such clauses could potentially lead to increased mobility in the workforce, presenting both challenges and opportunities for HR professionals.

Recruiting top tech talent in today's market

From an HR viewpoint, the primary challenge will be retaining critical talent in a more fluid job market. However, this can also be viewed as a motivating opportunity to focus even more on employee satisfaction and organizational loyalty — factors that can mitigate the impact of expected increased employee turnover. Furthermore, HR can lead the way in helping organizations adapt by identifying alternative clauses and safeguards, and promoting a positive, healthy workplace culture.

Leverage alternatives

With the inability to enforce noncompete clauses, HR leaders must focus on other contractual and policy measures to protect their organization's assets and industries, particularly in industries with high stakes in intellectual property and competitive dynamics.

One option is intellectual property protection. Ensuring robust intellectual property clauses in employment contracts from the outset is crucial. These clauses help secure a company's innovations and proprietary information, which are often the lifeblood of competitive advantage. Particularly in sectors such as technology, pharmaceuticals, AI and similar industries, focus on these clauses is imperative.

Non solicitation clauses are worth considering as well. These can prevent departing employees from poaching clients and colleagues from their previous employer. These clauses are vital for maintaining stability within the organization, and protecting the customer and talent base of the company.

Build a retentive culture

The reality faced by employers today is that most employees will not remain at one company indefinitely. This nature of modern careers makes it essential for companies to cultivate an environment that not only attracts but also retains top talent.

With our clients at Humani HR, we often discuss the importance of creating a workplace that will prevent people from wanting to leave, and we put this into practice at our own organization as well. From culture to benefits, from career progression plans to leadership development, there are many options outside of salary to incentivize employees to remain loyal to their workplace. Below are some actionable examples of those best practices for HR leaders to consider.

Develop a positive work culture. A workplace that employees are proud to be part of and where they feel valued is fundamental. This includes everything from fostering a supportive and inclusive work environment to recognizing and rewarding contributions.

Focus on career development. Opportunities for professional development are a significant draw for workers. More than a third of employees surveyed in 2022 by Pew Research Center named lack of career growth opportunities as their reason for leaving an organization. This spotlights the importance of development and potential to workers and employers alike. HR can help ensure that employees have clear pathways for advancement, and access to training and development resources as well as growth opportunities.

Enhance benefits. Competitive salaries remain crucial, but other benefits have risen in popularity with newer generations of workers. Those include flexible working conditions, health and wellness programs, family-friendly leave policies and more. HR can help company leaders determine the best benefits to increase employee satisfaction while enhancing company success.

Communicate openly. Feedback and anonymous surveys are immensely helpful tools for organizations to learn what their employees want in their careers and day-to-day work. Create opportunities for employees to share what's working and what isn't to get firsthand information about the types of benefits and programs your employees desire. HR can spearhead this initiative, both by creating the opportunity for employees to share and by reporting results to the employer. From there, HR leaders can develop a plan of action for any approved initiatives.

Implement effective change management

As the FTC's ban prompts changes in contract structures, HR leaders must also excel in change management. Effective communication is key to ensuring all stakeholders understand (and adapt to) new policies.

HR should take the lead in training managers and employees on the implications of these changes, and how they align with the broader goals of the organization.

First, provide training sessions and workshops to educate both organizational leaders and employees about the changes in policy and how they impact day-to-day operations. Being proactive with communication will lessen issues later.

And then maintain open lines of communication. Feedback mechanisms and Q&As should be put in place to address any concerns or suggestions from employees regarding new policies.

Spearhead change

The FTC's noncompete ban will undoubtedly bring change, but it also provides a unique opportunity for HR professionals to lead and spearhead change.

By focusing on alternative legal protections and, more importantly, on creating an engaging and supportive workplace culture, companies can navigate these changes successfully. The goal is clear: Transform this challenge into an opportunity to build a more dedicated, motivated and stable workforce.