

**U.S. Senate Committee on Banking, Housing, and Urban Affairs,
Subcommittee on Economic Policy
Comments on: “Banning Noncompete Agreements: Benefits for Workers, Businesses, and the
Economy”
June 30, 2024**

On behalf of the Center for Law and Social Policy (CLASP), I submit these comments in support of upholding the Federal Trade Commission’s (FTC’s) noncompete ban. We applaud the Subcommittee on Economic Policy’s decision to hold a hearing investigating how the FTC’s noncompete ban will benefit workers, businesses, and the economy. CLASP is a national, nonpartisan nonprofit dedicated to advancing anti-poverty policy solutions that disrupt structural and systemic racism and sexism and remove barriers blocking people from economic security and opportunity. With deep expertise in a wide range of programs and policy ideas and over 50 years of history, CLASP works to amplify the voices of directly-impacted workers and families and help public officials design and implement effective programs.

CLASP seeks to improve the quality of jobs for low-income workers, especially workers of color, women, immigrants, and youth. We work with policymakers to raise wages, increase access to benefits, implement and enforce new and existing labor standards and ensure workers can strengthen their voice through collective bargaining. Quality jobs enable workers to balance their work, school, and family responsibilities – promoting economic stability and security.

The FTC’s ban on noncompete agreements is a crucial part of a suite of policies needed to improve job quality and level the playing field for workers. Noncompete agreements are widely used clauses in employment contracts that limit workers’ ability to work for “competitor” companies, including starting their own business, for a specific amount of time or within a specific geography. In our current labor market, noncompete agreements are frequently used to essentially trap workers in their current employment, limiting economic mobility by preventing workers from seeking competitive employment opportunities. Noncompetes drive down wages, stifle competition, and allow employers to keep job quality low. The FTC’s ban on noncompete agreements combats this common practice by barring employers from creating new noncompete agreements and rendering the vast majority of noncompetes null and void and is therefore essential to improving job quality.

Noncompetes are pervasive in low-quality jobs

There is a common misconception that noncompete agreements are reserved for executive-level employees to protect “trade secrets.” In reality, noncompetes are pervasive, spanning every conceivable industry and job level. In fact, one in five workers – an estimated 30 million workers – are subject to noncompete agreements.¹ Among these, the modal worker is an hourly worker earning a median wage of \$14.² Few if any of these workers have access to information that is not widely known.

In many cases, signing a noncompete comes as a condition of employment. Less than 10 percent of workers negotiate their noncompete agreements, and a whopping 93 percent of workers sign them anyway in order to secure their jobs.³ Many workers are only given this agreement *after* they’ve already accepted employment; others are asked to sign non-competes during their onboarding process, often within a mountain of paperwork and rushed through signing so that they’re not even aware of the way in which they are binding themselves to their employer.

Noncompetes disproportionately keep job quality low for women and workers of color

Workers most likely to sign a noncompete agreement are those already in low-quality, low-wage jobs. Due to occupational segregation, women, workers of color, immigrant workers, and LGBT workers are overrepresented in such positions. This means that workers already impacted by systems of power are further marginalized by being coerced into signing agreements that limit their bargaining power. Marginalized workers are overrepresented in low-paying industries like customer service, hospitality, and retail – industries that are also the least likely to be unionized and therefore have the power to bargain for better working conditions.⁴ Being already at a disadvantage from low pay, around 17 percent of workers in these industries are then subject to non-compete agreements.⁵

Non-competes are a further barrier to racial and gender equity for workers because of the way in which they promote low job quality and prevent competition. When a worker is bound to a noncompete agreement, they cannot leave their job for one with better pay or working conditions. This allows employers to keep job quality and pay low without fear of competition. The prevalence of noncompetes doesn’t just depress wages for workers with noncompetes – they instead have a chilling effect that depress all wages.⁶ Noncompetes lead to a stagnant economy for both workers and businesses: with workers unable to move freely in the labor market and smaller and newer companies unable to compete against

¹ Natarajan Balasubramanian, Evan Starr, and Shotaro Yamaguchi, “Employment Restrictions on Resource Transferability and Value Appropriation from Employees,” *S&P Global Market Intelligence*, May 2024, <https://ssrn.com/abstract=3814403>.

² Michael Lipsitz and Evan Starr, “Low-Wage Workers and the Enforceability of Noncompete Agreements,” *Management Science* vol. 68, no.1, April 2021, <https://pubsonline.informs.org/doi/10.1287/mnsc.2020.3918>.

³ Evan Starr, *The Use, Abuse, & Enforceability of Non-Compete and Non-Poach Agreements*, Economic Innovation Group, February 2019, <https://eig.org/noncompetesbrief>.

⁴ Union Members, 2023. Bureau of Labor Statistics, January 2024. <https://www.bls.gov/news.release/pdf/union2.pdf>

⁵ Ibid.

⁶ Rajshree Agarwal, Justin Frake, and Evan Starr, “Mobility Constraint Externalities,” *Organization Science* vol. 30, no. 5, July 2019, <https://pubsonline.informs.org/doi/10.1287/orsc.2018.1252>

larger corporations and noncompetes, economic dynamism is stifled, and wages stagnate.⁷

In a job market that already lacks strong worker protections against retaliation, workplace danger, and discrimination, the inability to move to a better-quality workplace dramatically increases the likelihood that women and workers of color will be forced to remain in dangerous or abusive workplaces with poor pay and poor working conditions, perpetuating the cycle of occupational segregation. Noncompete clauses are also detrimental to worker power. When workers know that they cannot find work within their industry outside of their employer, they are less likely to negotiate better wages or working conditions either individually or within a collective bargaining effort. Women in states with strict enforcement of noncompetes are less likely than men to leave their jobs, and women and women of color are less likely to negotiate their non-compete clauses.⁸

Banning noncompetes has already been successful, but state policy is not enough

Researchers have estimated that banning noncompetes nationwide would close racial and gender wage gaps by 3.69 percent.⁹ Evidence from state-implemented noncompete bans bears this out. A study of Oregon’s noncompete ban found that hourly wages increased by 2 to 3 percent on average.¹⁰ Several states have implemented either bans or limits on noncompetes. States such as Illinois, Maryland, Rhode Island, New Hampshire, and Maine all prohibit noncompetes for workers paid “low wages,” with different definitions of what counts as a low wage for each state.¹¹ Other states have attempted to put guardrails on noncompetes by industry, such as New Mexico within their healthcare industry, or Hawaii’s tech industry.¹² Massachusetts has limited noncompetes to a duration of one year.¹³ All of these state policies have shown to benefit workers not only in those states, but in border states as well.¹⁴

Yet, state programs are not enough. Even within states with broad noncompete bans, like the newly enacted Minnesota noncompete ban, not all workers are covered. In Minnesota, the law only prohibits the enforcement of noncompetes entered into after July 2023, leaving nearly 300,000 Minnesota workers trapped in their noncompetes.¹⁵ Relying on a patchwork of state programs creates incomplete

⁷ John W. Lettieri, *Noncompete Agreements and American Workers—Testimony before the Senate Committee on Small Business*, Economic Innovation Group, November 2019, <https://eig.org/news/testimony-before-the-senate-committee-on-small-business-noncompete-agreements-and-american-workers>.

⁸ Matt Marx, *Employee Non-Compete Agreement, Gender, and Entrepreneurship*, May 4, 2020, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3173831.

⁹ Matthew S. Johnson, Kurt Lavetti, and Michael Lipsitz, “The Labor Market Effects of Legal Restrictions on Worker Mobility.” June 6, 2020, Revised October 13, 2021.

¹⁰ Lipsitz *supra* n. 21.

¹¹ Kevin Burns, “Noncompete Reform Continues in New England: Maine, New Hampshire, and Rhode Island All Pass New Laws”, *JDSUPRA*, July 2019, <https://www.jdsupra.com/legalnews/noncompete-reform-continuesin-new-18937/>.

¹² “Enforceability of a Non-compete provision”, NM Stat § 24-11-2 (2015), <https://law.justia.com/codes/newmexico/2015/chapter-24/article-1i/section-24-1i-2> and “Relating to Employment Agreements”, H.B. No. 1090, 28th Legislature, 2015, State of Hawaii, http://www.capitol.hawaii.gov/session2015/bills/HB1090_CD1_.htm.

¹³ Shira Schoenberg, “What Does Massachusetts’ noncompete reform mean for you?”, *MASSLIVE*, August 2018, <https://www.masslive.com/expo/news/erry-2018/08/d4240441a67183/what-does-massachusettsnoncom.html>.

¹⁴ *Ibid*.

¹⁵ Mary Hogan and Grace Ryan, “Minnesota’s ban on non-competes marks historic change for low- and moderate-income

protections for workers. Workers should not merely hope to have a fair employer or live in a state with a noncompete policy that can apply to them. All workers should have the ability to move freely within their industry, seeking jobs with better pay, better working conditions, and more dignity and respect at work.

The FTC's ban on noncompetes is a much needed rule to increase worker mobility, economic dynamism, and to decrease the gender and racial wealth gap. We thank you for this opportunity to submit this written statement for the record. If you have any questions regarding this topic, please feel free to contact Nat Baldino, Policy Analyst with the Education, Labor and Worker Justice Team at CLASP at nbaldino@clasp.org.

workers," Federal Reserve Bank of Minneapolis, January 2024, https://www.minneapolisfed.org/article/2024/minnesotas-ban-on-non-competes-marks-historic-change-for-low--and-moderate-income-workers#_ftn1