DSJ GLOBAL

PART OF PHAIDON INTERNATIONAL

MARKET UPDATE

The FTC Non-Compete Ban

INDUSTRY INSIGHTS

A guide for businesses on what the ruling means for supply chain organizations

USA

Introduction

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

According to the CFO[1], the FTC's new rule, originally set to come into effect on 4 September 2024, would prohibit companies from using non-compete agreements for most workers anymore, except for senior executives. Employers would have to tell their workers that these agreements aren't enforceable anymore, with the FTC providing example language to aid compliance of the ruling.

The United States District Court for the Northern District of Texas recently issued final judgment setting aside the ruling, meaning companies do not need to abide at present. However, the FTC is expected to appeal the decision[2].

While we wait for whether the ruling will ultimately 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.

Three Challenges Businesses Must Address

1. RETAINING TALENT

"Companies could quickly and unnecessarily lose top talent to direct competitors without the reassurance of a six month non-compete clause, or other contractual protections," **explains Ross Williams, Director at DSJ Global**.

Compensation, including bonuses, plays a crucial role in the supply chain industry in creating compelling packages that entice professionals to onboard, and stay. According to the latest **DSJ Global salary survey**, over half (53%) of the 1,000+ supply chain professionals surveyed said they did receive a pay rise to their base salary, albeit only 1-5% of an increase.

This is juxtaposed with what professionals would want if they moved companies, with over 40% wanting a salary increase between 11-20%. **Christine Corson, Executive Director at DSJ Global therefore suggests** that, "if top talent doesn't feel like their current salary or bonus keeps them motivated, a higher offer from elsewhere could easily tempt them. Employers must prioritize retaining their talent by ensuring their employees feel valued and content in their current roles."

Economic instability may have made employees hesitant to seek new opportunities previously, resulting in a tight talent market. However, while this ruling may increase mobility in the market, the best candidates, if they decide to leave, will not stay on the market for long regardless, demonstrating the importance of appreciating employees and taking proactive steps to retain them.

"Many companies outsource parts of their supply chain, such as not owning the warehouses to store and hold inventory, the factories or plants manufacturing products, or the transport used to move goods across the world. Supply chain leaders therefore have to build good relationships and negotiate with third parties who provide such services.

"These relationships and in turn negotiations can help companies grow significantly and become more profitable, from reducing rates on shipping costs from a logistics supplier to cutting a manufacturers cost-per-unit charges in factories. Supply chain leaders are able to do this based on their relationships with the logistics supplier or manufacturer, and if someone leaves, that whole supply chain, and its cost savings, are at risk. Leveraging good relationships can have a massive financial impact on organizations, so not being able to lock top talent in as easily will worry the industry." **Ross Williams, Director, DSJ Global**

Three Challenges Businesses Must Address

2. SAFEGUARDING INFORMATION

Another challenge Ross highlights is due to the risk of top talent being able to leave more easily, leadership may be less forthcoming with colleagues and the wider workforce on new projects, innovations, product / service launches, and so on, due to worrying about this information being quickly shared with competitors should someone unexpectedly leave and move:

"Businesses could in effect lose their competitive edge overnight,**" summarizes Ross.**

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.

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.

Firms should also foster an environment where employees understand the sensitive nature of their roles and respect your information, while also at the same feeling that your organization is also transparent and caring, **says Ross**:

"My advice to clients is to be as kind and transparent as possible to your workforce, treat people with respect and don't give them an incentive to consider leaving your business. Consistently communicate and care, regularly checking in with how people are doing. And be proactive in doing this, don't wait for someone to ask for a conversation.

"Within reason, try and not withhold or conceal colleagues to any significant, upcoming changes. Instead of feeling like a cog in a big machine, make people feel important and share how they can help with the bigger picture so they feel part of it and more likely to stay.**"**

Three Challenges Businesses Must Address

3. FURTHER REGULATIONS & COSTS

Adhering to further regulations may 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. In response, companies may even need to restructure to allocate budgets to hiring an in-house counsel. 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.

When supply chain management success relies so heavily on optimizing costs, anything that eats into that profit margin could be problematic.

From potential litigation and lawsuits to creating new clauses in employment contracts, the non-compete ban is going to increase regulatory and legal requirements. 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, update existing agreements, and in general assist in adapting to a post-non-compete landscape.

Our regulatory & legal talent brand, Larson Maddox, can assist businesses here.

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 create 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.

> **"**The non-compete ban will trigger increased communication, flexibility, and compromises within businesses. Stakeholders must not give colleagues incentives to move to a competitor now knowing how much easier it would be.
>
> **"**Candidates may also not need to relocate as much, which would be good for them not having to upheave families and spouses to a new place. Typically non-competes have been used for competitors in close proximity and candidates would need to relocate or even move to a completely different industry where the new company wouldn't be considered a direct competitor.**"**
>
> **Ross Williams, Director at DSJ Global**

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, with exceptions of course, while a number of other states 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.

> "I predict there will be faster growth, evolution, and learning within the industry. For example, someone who might have previously been excluded from joining a competitor immediately due to a non-compete will now be able to move. While businesses may worry about the transfer of knowledge, they can also benefit from this with new talent being able to quickly move in and pioneer new innovations, accelerating the industry's output."
>
> **Ross Williams, Director at DSJ Global**

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.

"Without non-compete clauses, more professionals will be readily available to hire immediately, which will speed up recruitment and increase the size of the supply chain talent pool for organizations. Employers won't have to wait as long for candidates to complete their gardening leave or non-compete periods either, which will again quicken the hiring process."

Christine Corson, Executive Director, DSJ Global

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, better performance, and more 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.

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

Summary

As an ever-evolving news story, it's crucial to remain informed about the potential impact of the FTC's ruling. Although the ruling has been blocked and will not take effect on 4 September as originally planned at the time of publishing this guide, the expectation that the FTC will appeal the decision 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 future 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 DSJ Global. 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 law firms and businesses create attractive work environments and competitive compensation packages. By leveraging the expertise of DSJ Global, you can navigate the challenges posed by the FTC ruling and ensure your talent requirements are met.

About DSJ Global

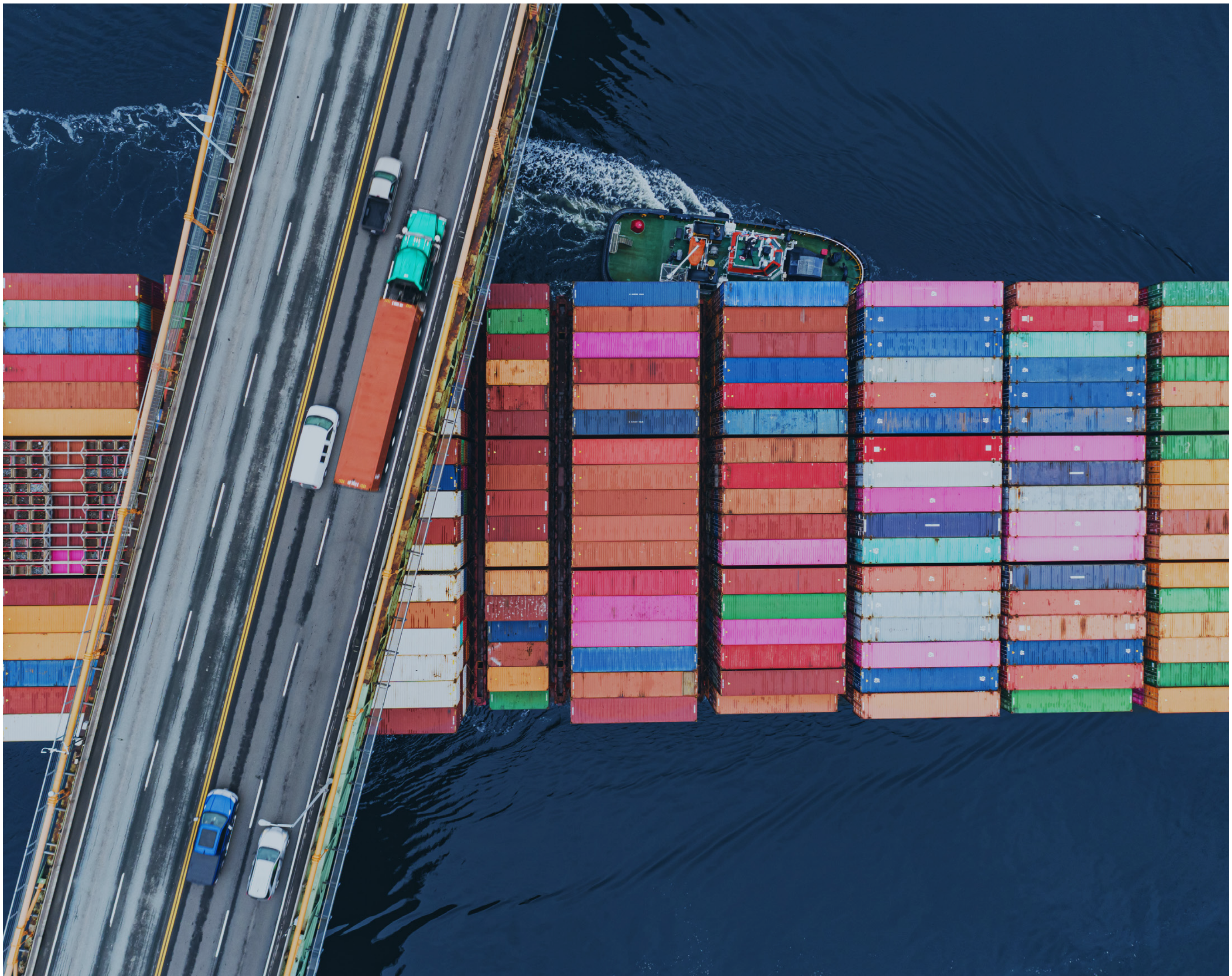
As the supply chain industry rapidly evolves to become more digital, localized, and sustainable, organizations are facing the challenge of sourcing in-demand, business-critical professionals to manage these ever increasing, complex structures.

From increasing transparency to encourage greener practices, to implementing secure technology to protect supply chains from cyber threats, organizations are enacting transformational change and need high-caliber talent to be able to future-proof their operations and remain resilient.

We support businesses with the very best talent that will shape the supply chain industry of tomorrow, ensuring the world's goods keep moving efficiently along the way.

Our Specialisms

- Planning
- Procurement
- Engineering
- Logistics
- Supply Chain Leadership
- Technical Operations



UPLOAD YOUR RESUME

SUBMIT A VACANCY

NEW OPPORTUNITIES

Contact DSJ Global

For general inquiries or to discuss your hiring needs, please reach out to:

Christine Corson
Executive Director
Contact Christine

Emily Prendergast
Executive Director
Contact Emily

Ross Williams
Director
Contact Ross

info@dsjgobal.com

DSJ Global

dsjglobal.com

* This document was created on 5/31/24 and updated 8/28/24, 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

2. https://natlawreview.com/article/texas-federal-judge-blocks-ftc-non-compete-ban