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Keith Ellison asks FTC to ban employers' noncompete clauses

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November 18, 2019

Minnesota Attorney General Keith Ellison is leading a group of 19 state attorneys general encouraging the Federal Trade Commission to bar noncompete clauses in employee contracts.

Noncompete clauses are added to contracts to prevent workers from seeking employment in other companies within the same industry.

In a Nov. 15 letter to the FTC, the attorneys general say these clauses deprive workers of "their freedom to use their labors as they choose."

The letter requests the FTC to classify noncompete clauses as an "unfair method of competition."

The letter says noncompete clauses only benefit employers, inhibiting innovation and potentially driving up consumer costs by making it more difficult to hire from within an industry.

"Non-compete clauses are another way the economy is stacked against people just trying to afford their lives — especially low-income workers," Ellison said in an announcement of the letter. "There's no good reason a barista, home-health aide, or a sandwich-maker shouldn't be able to change jobs and employers whenever it makes sense for them to."

Currently, about one in five American workers is bound by a noncompete clause. Many states have laws prohibiting noncompete agreements entirely, including California, Washington, Massachusetts and Maryland. Minnesota has no laws against these agreements.

The letter is a follow-up to a comment submitted in July, which was an endorsement of a petition signed by various workers' rights advocates from last spring.

Minneapolis labor and employment attorney Craig Trepanier said noncompete agreements are meant to protect an employer's confidential information, trade secrets and customer relationships. But he said when they are overreaching, they can be problematic — especially in low-skill or low-wage jobs where workers are unlikely to have access to trade secrets.

"If not used appropriately, they can certainly make it very difficult for workers to better their working conditions, improve their wages, move on in their career," Trepanier said.

When brought to court, noncompete agreements are evaluated by a few standards:

- **Duration —** In Minnesota, 12 months is typically considered reasonable. Trepanier said two years is uncertain, and three years is generally considered unreasonable.
- **Geographic scope —** This is very circumstantial. In some cases, such as a 2011 Medtronic suit, "worldwide" can be deemed a reasonable geographic scope.
- **Nature —** The court will balance duration and geographic scope along with the necessity of the noncompete clause to protect an employer's confidential information.

Noncompete agreements have drawn past controversy. Jimmy John's dropped noncompete clauses from employment contracts in 2016 following an investigation by the New York attorney general.

"Non-compete agreements for low-wage workers are unconscionable," said then-Attorney General Eric Schneiderman in a 2016 statement. "They limit mobility and opportunity for vulnerable workers and bully them into staying with the threat of being sued. Companies should stop using these agreements for minimum wage employees."

Also signing the letter are attorneys general of California, Delaware, the District of Columbia, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington and Wisconsin.