



March 1, 2023

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<https://www.regulations.gov/commenton/FTC-2023-0007-0001>

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Attn: Shannon Lane, Office of Public Policy

RE: The National Survivor Network's Input on the Proposed Rule on Noncompete Clauses

Dear Commission:

The National Survivor Network (NSN) is a values-based, survivor-led professional membership network for survivors of human trafficking who are engaged in or preparing for leadership in the movements to end violence. In February 2011, the Coalition to Abolish Slavery and Trafficking (Cast) launched the NSN to foster connections between survivors of diverse forms of human trafficking and to build a national anti-trafficking movement in which survivors are at the forefront and recognized as leaders. While the NSN is a program of Cast, our funding explicitly requires that everything we do is survivor-led at every level, and thus we operate with a high degree of autonomy. Our input reflects the NSN's broad commentary, rather than Cast's.

Our input is developed directly from listening sessions with our members. The NSN's members all have lived experience of human trafficking, as well as other forms of violence and oppression. Our members include migrants, US citizens, survivors of the Murdered and Missing Indigenous Women crisis, two-spirit and LGBTQ individuals, and people with diverse disabilities and chronic illnesses, some of which emerged from our trafficking. Our members work for local and state anti-trafficking programs as direct service providers, are consultants to organizations nationwide, or work at the national level as leaders, employees, and consultants. The NSN's diverse membership makes it uniquely informed about dynamics that lead to gross violations of both worker rights and human rights, and the ways in which loopholes are often exploited by businesses to destabilize worker safety and economic stability in the name of profit.

The NSN offers the following information about the ways in which noncompete clauses hurt workers, increase vulnerability to exploitation (including human trafficking), and make it hard

for survivors of trafficking and other forms of exploitation to rebuild stability in the wake of violence.

1. Noncompete clauses create worker vulnerability, and worker vulnerability increases the risk of human trafficking.

Fundamentally, noncompete clauses make people more economically vulnerable, and economic vulnerability increases the risk of human trafficking.¹ Additionally, noncompete clauses make it more difficult for workers to leave abusive workplaces for another job in the same industry and may be abused to intimidate or coerce would-be whistleblowers. These in and of themselves leave people vulnerable. When workers are unable to meet their needs with their current income or access safe, equitable workplaces, they often make tradeoffs that can increase their risk of harm through seeking “under-the-table” employment that may lead to exploitation.

Additionally, many trafficking survivors are trafficked in the context of legitimate businesses or operations posing as legitimate businesses. *It is a myth that people are only trafficked when physical restraint or threats of violence are used; debt bondage, fraudulent contracts, and lack of options often are used to maintain control over workers.* A worker may not know that the business they are “employed” by is an illegitimate trafficking operation, and normalizing noncompete clauses means that the traffickers can claim that an extremely restrictive, abusive, and coercive noncompete clause prevents the worker from leaving, thus becoming part of the *fraud* of human trafficking. When the workers are threatened with legal, economic, or immigration consequences if they violate these fraudulent clauses, it also becomes part of the *coercion*.

Trafficking happens even within legitimate businesses. For example, when migrant workers come to the United States, their work visas are typically tied to one employer. When a noncompete clause is a barrier to being able to transfer the work visa from one employer to another, the worker has two choices: stay, no matter how horrific the work conditions are, or be deported. In some cases, such as those experienced by salon workers, noncompete clauses can prevent workers from being able to leave exploitative workplaces to move into self-employment.

2. Noncompete clauses can prevent someone currently being trafficked from being able to leave if they wanted to.

¹ See International Labour Organization, Profits and Poverty: The Economics of Forced Labour (2014), available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf.

Noncompete clauses and threats of legal action are often part of the coercion by a trafficker operating as a legitimate business. Often, the terms of “employment” are not themselves legal, but workers disproportionately bear the financial burden of legal challenges to determine this, and may not seek out legal review (especially given the lack of pro bono services for many administrative labor violations). Documentation status is often threatened as part of the coercion, and **migrant workers need barriers to transferring visas removed**, not increased or solidified.

3. Noncompete clauses impede survivors’ ability to rebuild stability after trafficking.

After months, years, or decades of extreme exploitation, survivors struggle to access meaningful workplace development and skill-building, particularly to find employment that accommodates any health impacts of human trafficking. Often, survivors go to extreme lengths at great costs to their wellbeing to learn skills and build stability, and then are unable to access upward mobility within their organization or field or are unable to transfer workplace skills to better-paying, more respectful, or less exploitative environments.

Due to structural and legal barriers to regular employment, many survivors are gig workers, independent contractors, or work in informal economies. Noncompete clauses make it difficult for these survivors to move from less-ideal work into better-paid work. For this reason, we applaud the intention to include independent contractors under this ban to ensure that contract workers maintain the right to build their businesses and to move into and out of employment status throughout their careers.

An example: some innovative programs, such as that operated by AnnieCannons, teach survivors coding and technology skills to support their income-earning potential with in-demand professional skills. Tech workers (who are not all wealthy “tech bros”) often build extravagant platforms for large businesses under noncompete clauses that limit their ability to use the professional knowledge gained in future work.

4. Noncompete clauses disrupt the economic stability of survivors working in the anti-trafficking movement.

Nonprofit and for-profit corporations in our anti-trafficking or anti-violence sectors often ask independent contractors to sign noncompete agreements or non-disclosure/confidentiality clauses that function as noncompete agreements. Contractor work is unstable for most survivors, and these clauses prevent survivors who are using contract work as a way to build

their skills and networks may be prevented from finding full-time employment that uses those skills. Similarly, employees who develop skills in the workplace may be prevented from leaving workplaces that do not have a genuine survivor-centered lens (even if they are “survivor-led”), or in which the survivor employee is tokenized or invalidated, to begin their own organization or business that is genuinely survivor-centered. This is especially important due to our unique anti-trafficking movement’s history and dynamics of being deeply intertwined with carceral systems; survivor leaders who do not align with the mainstream frameworks need the freedom to leave their organizations to pursue opportunities that allow for the development of alternative frameworks that can better support marginalized communities.

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While we hope this new rule passes and that noncompete clauses will be banned, we recognize that corporate interests often prevail in policy decisions and that you may face opposition from businesses and the politicians that they fund. If the noncompete ban does not pass due to the prioritization of corporate interests over those of workers and survivors of exploitation, we hope that you will continue advocating for limitations on noncompetes while developing robust “know your rights” materials, resources, and trainings (including through partnerships with anti-trafficking organizations) to ensure that workers are better supported in self-advocacy.

Thank you very much for your time and consideration,

Chris Ash, Survivor Leadership Program Manager
National Survivor Network - Cast