

MARKET UPDATE

The FTC Non-Compete Ban



INDUSTRY
INSIGHTS

A guide for businesses
on what the ruling
means for life sciences
organizations

USA
Report



Introduction

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

According to the CFOⁱ, 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, 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 decisionⁱⁱ.

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.

Jae Yoo, Executive Director at EPM Scientific says:

"The FTC ban would require companies to be as competitive as possible in terms of salary banding, otherwise they run the risk of losing their employees.

"My advice to clients is to make sure they are in-tune with the market by offering competitive and market rate compensation plans, but also make sure they are aware of how their internal opportunities are perceived within the market as well."

The ruling has a broad definition of "workers", the requirement for employers to notify employees of unenforceable non-competes, and its pre-emption over state laws. It will not be universal across all industries, exempting some nonprofit health care entities and certain senior executives, but this therefore raises uncertainties for other health care organizations. 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

Compensation, including bonuses, plays a crucial role in the life sciences industry in creating compelling packages that entice professionals to onboard, and stay.

According to our latest salary survey, 62% of life sciences professionals received a bonus within the last 12 months, and the values they were awarded varied. A combined 29% received a bonus worth 1-10% of their base salary, while 21% received 11-20%.

Luke Newton, Managing Director at EPM Scientific, explains how the economic climate and company performance over the past year may have impacted professionals' bonuses:

"Bonuses are often tied to company performance, and generally speaking, companies haven't been performing at the levels they were aiming for over the past year. As a result, there have been consolidated efforts to save money, so it doesn't surprise me that many people didn't receive a bonus and the numbers are fairly modest for many who did."

The importance of decent compensation cannot be overstated because if top talent doesn't feel like their current salary or bonus keeps them motivated, a higher offer 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. This emphasizes the importance of showing appreciation for valuable employees and taking proactive steps to retain them.





Three Challenges Businesses Must Address

2. SAFEGUARDING INFORMATION

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.

Therefore, firms must foster an environment where employees understand the sensitive nature of their roles and respects your organization's information. 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.





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.

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.





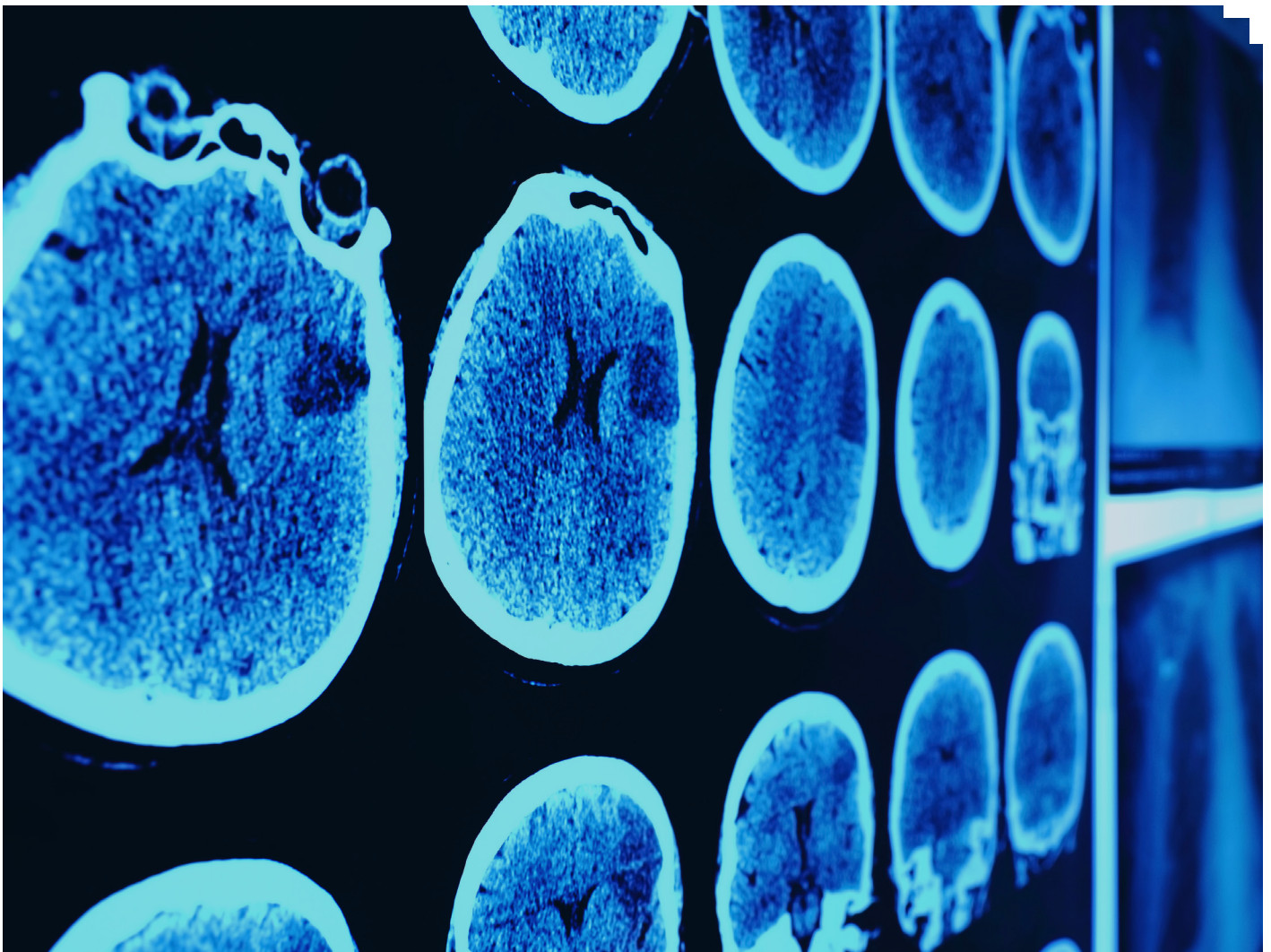
Three Potential Benefits to Businesses

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 foster 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.

As Jae summarizes, “The FTC ban will be positive for the life sciences industry because companies having better access to the best talent without being as tied down with non-competes means top candidates will be able to move companies without penalties.”





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.





Three Potential Benefits to Businesses

3. HIRE FASTER

Many non-compete agreements come with a transition period for employees, prohibiting them 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. You will be able to identify

suitable candidates faster and extend job offers swiftly, reducing the time it takes to fill crucial positions. Companies may see higher productivity levels and as a result, better performance and 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 this 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, life sciences organizations 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 EPM Scientific. 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 organizations and hiring managers in life sciences create attractive work environments and competitive compensation packages. By leveraging the expertise of EPM Scientific, you can navigate the challenges posed by the FTC ruling and ensure your talent requirements are met.





About EPM Scientific

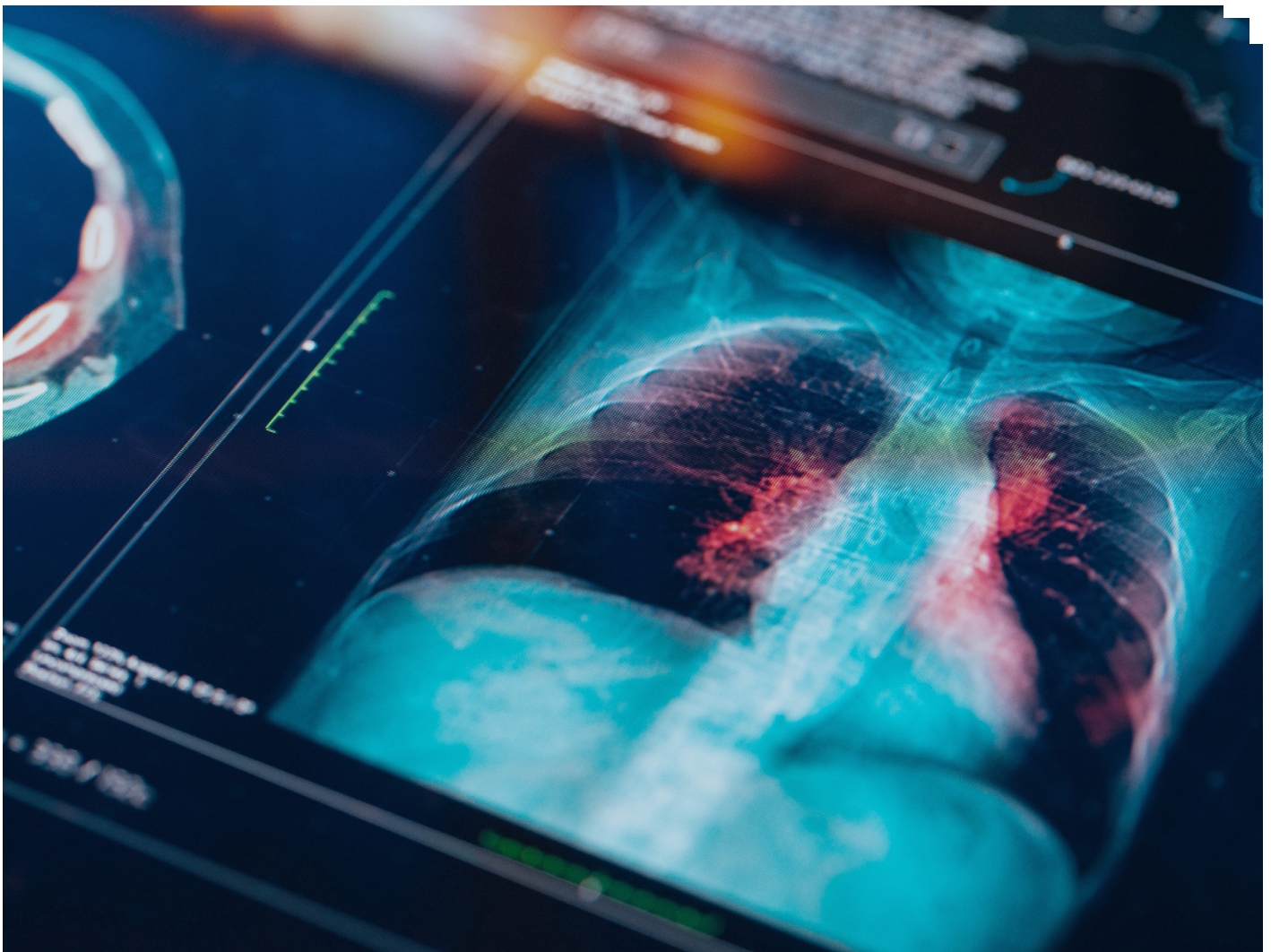
In the face of disruption, innovation and competition, life sciences companies and their leaders must find specialist talent faster than ever before.

Demand for top life sciences talent has accelerated since the pandemic, and the continued emergence of start-ups and greater interest in drug development is also unrelenting, meaning having a leading talent partner to connect employers to the very best people in the industry is crucial for its sustained growth.

We support the world's largest life sciences institutions by connecting them with in-demand professionals to take the next leading drug, device or therapeutic application from conception, into Research & Development, and Clinical, all the way through to Sales & Marketing.

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Contact EPM Scientific

Jae Yoo

Executive Director
EPM Scientific, North America

Contact Jae

Luke Newton

Managing Director
EPM Scientific, Los Angeles

Contact Luke

 info@epmscientific.com

 [EPM Scientific](#)

 epmscientific.com

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i. [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](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)

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