

Client Alert: Federal Trade Commission Announces New Partnership with Department of Labor

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On September 21, 2023, the Federal Trade Commission (FTC) announced a new memorandum of understanding (MOU) with the United States Department of Labor (DOL) to bolster the FTC's efforts to protect workers.^[1] According to the FTC's press release, the MOU outlines how the FTC and DOL will collaborate to combat labor market concentration, one-sided contract terms, and the developing "gig economy."^[2] The partnership seeks to promote competitive US labor markets and end unfair and deceptive practices that harm workers.^[3]

The agreement permits the FTC and DOL (the Agencies) to share information, provide training to each Agency's staff, and partner on investigations and enforcement activities.^[4] The MOU identified specific areas of mutual interest for the two agencies, including:

- collusive behavior;
- business models designed to evade legal accountability, such as misclassification of employees;
- illegal claims and disclosures about earnings and costs associated with work;
- one-sided and restrictive covenant provisions;
- labor market concentration; and
- the impact of algorithmic decision-making on workers.^[5]

Under the MOU, the Agencies are also permitted to consult on specific complaints, including reviewing information obtained during an investigation or coordinating requests for information.^[6] The Agencies also may make cross-referrals of potential violations and exchange information about

general patterns of conduct that are anticompetitive or otherwise harmful to workers or consumers.
[7]

The partnership follows a prior MOU between the FTC and National Labor Relations Board (NLRB), announced on July 19, 2022.^[8] As described at the time, the NLRB agreement focused on combatting similar issues, including the “gig economy,” labor market concentration, restrictive covenants, the classification and treatment of workers, and the ability of workers to act collectively.^[9] While the NLRB partnership prioritizes information sharing and cross-agency consultations, the DOL agreement specifically contemplates procedures for coordinated investigations and enforcement.^[10]

Notably, the FTC’s latest press release also signals that it is intensifying efforts to regulate employment contracts. The FTC emphasized that it has “prioritized cracking down on anticompetitive contract terms” that disadvantage workers.^[11] At the time of the NLRB partnership announcement, the FTC indicated that it was only “scrutinizing” whether anticompetitive contract terms may violate the law.^[12] In last week’s announcement, the FTC specifically warned that it is considering a proposed rule that would ban noncompete clauses in employment contracts.^[13]

The partnership also builds on the FTC’s strong policy statement related to work in the “gig economy,” introduced on September 15, 2022.^[14] The accompanying press release highlighted several issues facing gig workers, including deception about pay, unfair contract terms, and anticompetitive wage fixing.^[15]

The FTC’s latest announcement reflects its continued aggressive push to regulate the US labor markets. The agreement with the DOL is framed to reflect a “broader FTC initiative to use the agency’s full authority,” including enforcement actions, to protect workers from anticompetitive and unfair practices.^[16] In light of these new developments, employers should be sure to carefully review their employment agreements and policies to confirm that they align with the FTC’s latest initiatives.

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Footnotes

[1] Press Release, Federal Trade Commission, FTC, Department of Labor Partner to Protect Workers from Anticompetitive, Unfair, and Deceptive Practices (Sept. 21, 2023) [hereinafter “D.O.L. Press Release”].

[2] *Id.*

[3] *Id.*

[4] *Memorandum of Understanding Between the U.S. Department of Labor and the Federal Trade Commission*, F.T.C. & D.O.L. (Aug. 30, 2023), at 1 [hereinafter “F.T.C.-D.O.L. Memorandum of Understanding”].

[5] *Id.* at 2.

[6] *Id.* at 3.

[7] *Id.*

[8] *Memorandum of Understanding Between the Federal Trade Commission (FTC) and the National Labor Relations Board (NLRB) Regarding Information Sharing, Cross-Agency Training, and Outreach in Areas of Common Regulatory Interest*, F.T.C. & N.L.R.B. (July 19, 2022) [hereinafter F.T.C.-N.L.R.B. Memorandum of Understanding].

[9] Press Release, Federal Trade Commission, National Labor Relations Board Forge New Partnership to Protect Workers from Anticompetitive, Unfair, and Deceptive Practices (July 19, 2022) [hereinafter “N.L.R.B. Press Release”].

[10] F.T.C.-N.L.R.B. Memorandum of Understanding, *supra* note viii, at 1; F.T.C.-D.O.L. Memorandum of Understanding, *supra* note iv, at 3.

[11] F.T.C.-D.O.L. Memorandum of Understanding, *supra* note iv, at 3.

[12] N.L.R.B. Press Release, *supra* note ix.

[13] D.O.L. Press Release, *supra* note i; *see also* Press Release, Federal Trade Commission, FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition (Jan. 5, 2023).

[14] Press Release, Federal Trade Commission, FTC to Crack Down on Companies Taking Advantage of Gig Workers (Sept. 15, 2022).

[15] *Id.*

[16] D.O.L. Press Release, *supra* note i.

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