



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of the Chair

**Statement of Chair Lina M. Khan
Joined by Commissioner Rebecca Kelly Slaughter & Commissioner Alvaro M. Bedoya
In the Matter of Guardian Service Industries, Inc.
Commission File No. 2410082**

December 4, 2024

The ability to freely switch jobs is a pillar of economic liberty. Business practices that block people from doing so can depress workers' paychecks and infringe on their freedoms. Challenging conduct that restricts workers' mobility or undermines fair competition in labor markets has been a top priority of the Commission in recent years.¹

Building on these efforts, the Commission today has issued an administrative complaint against Guardian Service Industries, Inc. ("Guardian"), a building service contractor that employs around 2,800 workers to perform concierge, security, custodial, maintenance, and related services at residential and commercial buildings across New York, New Jersey, Connecticut, Maryland, and the District of Columbia. The FTC's complaint notes that Guardian includes "No-Hire" clauses in its contracts with some residential building owners. These clauses prevent building owners and building service contractors from directly hiring Guardian's employees. By restraining competition for workers, the Commission alleges, Guardian impedes the entry and expansion of its rivals and deprives security guards, janitors, and other staff it employs both of job opportunities and of the benefits that greater competition can spur, such as higher wages and better working conditions.² The complaint charges that these No-Hire clauses are unlawful restraints of trade that violate Section 1 of the Sherman Act and an unfair method of competition that violate Section 5 of the FTC Act.³

To resolve these charges, the Commission has proposed an order that would prevent Guardian from enforcing or entering into the No-Hire clauses at issue, allowing workers to freely switch jobs and businesses to freely hire.⁴ The order would require that Guardian notify, within 30 days after the order is issued, each employee and building owner subjected to a No-Hire

¹ Press Release, Fed. Trade Comm'n, FTC Announces Rule Banning Noncompetes (Apr. 23, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes>; Press Release, Fed. Trade Comm'n, FTC Cracks Down on Companies That Impose Harmful Noncompete Restrictions on Thousands of Workers (Jan. 4, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-cracks-down-companies-impose-harmful-noncompete-restrictions-thousands-workers>; Press Release, Fed. Trade Comm'n, FTC Challenges Kroger's Acquisition of Albertsons (Feb. 26, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/02/ftc-challenges-krogers-acquisition-albertsons>.

² The complaint alleges that effects of Guardian's use of No-Hire agreements include: "(i) impeding the entry and expansion of Guardian's competitors in the building services industry, (ii) reducing employee mobility, and (iii) causing lower wages and salaries, reduced benefits, less favorable working conditions, and, among other things, personal hardship to employees."

³ Complaint, *In re Guardian Serv. Indus., Inc.*, FTC File No. 2410082 (Dec. 3, 2024) at ¶ 2.

⁴ Decision, *In re Guardian Serv. Indus., Inc.*, FTC File No. 2410082 (Dec. 3, 2024) at ¶ 3.

clauses in the last three years that these clauses have been rescinded or will no longer be enforced.

Commissioners Ferguson and Holyoak dissent,⁵ continuing a trend in matters where the Commission is protecting American workers.⁶ They would prefer either that the Commission reject the proposed order and permit Guardian’s No-Hire clauses to remain in place, or that the Commission continue deploying resources towards this investigation even though Guardian has agreed to drop the contractual provisions at issue.⁷ Commissioner Ferguson suggests that the imposition of No-Hire clauses, absent evidence that they were enforced, would be benign—ignoring how even unenforceable contractual provisions can significantly chill people’s freedoms.⁸ That is especially so with No-Hire clauses, whose explicit function is to ensure certain job opportunities never come to pass. And as workers have explained to the FTC, even

⁵ Dissenting Statement of Comm’r Melissa Holyoak In the Matter of Guardian Serv. Indus., Inc. (Dec. 3, 2024); Dissenting Statement of Comm’r Andrew N. Ferguson In the Matter of Guardian Serv. Indus., Inc. (Dec. 3, 2024).

⁶ For example, Commissioners Ferguson and Holyoak dissented on the Commission’s rule freeing millions of American workers from noncompete clauses, opposed labor-related provisions in the updated Hart-Scott-Rodino form, and criticized the Commission’s work protecting gig drivers from unfair and deceptive practices by Lyft. Dissenting Statement of Comm’r Andrew N. Ferguson Joined by Comm’r Melissa Holyoak, In the Matter of the Non-Compete Clause Rule (June 28, 2024), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/dissenting-statement-commissioner-andrew-n-ferguson-joined-commissioner-melissa-holyoak-matter-non>; Dissenting Statement of Comm’r Melissa Holyoak Joined by Comm’r Andrew N. Ferguson, In the Matter of the Non-Compete Clause Rule (June 28, 2024), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/dissenting-statement-commissioner-melissa-holyoak-joined-commissioner-andrew-n-ferguson-matter-non>; Statement of Comm’r Melissa Holyoak, Final Premerger Notification Form and the Hart-Scott-Rodino Rules (Oct. 10, 2024), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/statement-commissioner-melissa-holyoak-regarding-final-premerger-notification-form-hart-scott-rodino>, and Concurring Statement of Comm’r Andrew N. Ferguson In the Matter of Amendments to the Premerger Notification and Report Form and Instructions, and the Hart-Scott-Rodino Rule (Oct. 10, 2024), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/concurring-statement-commissioner-andrew-n-ferguson-matter-amendments-premerger-notification-report>; Dissenting Statement of Commissioner Melissa Holyoak In the Matter of Lyft, Inc. (Oct. 25, 2024), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/dissenting-statement-commissioner-melissa-holyoak-matter-lyft-inc>; Statement of Commissioner Andrew N. Ferguson Concurring in Part and Dissenting in Part In the Matter of Lyft, Inc. (Oct. 25, 2024), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/statement-commissioner-andrew-n-ferguson-concurring-part-dissenting-part-matter-lyft-inc>. Notably, while Commissioner Ferguson continues to claim the FTC’s noncompete rule exceeds the Commission’s authority under Section 6(g) of the FTC Act, two of the three courts that have freshly reviewed the question have said during preliminary injunction rulings that Section 6(g) *does* confer substantive rulemaking authority on the FTC, a rejection of both Commissioner Ferguson’s and Commissioner Holyoak’s statutory arguments. See *ATS Tree Services, LLC v. FTC*, 2024 WL 3511630 (E.D. Pa. July 23, 2024); *Properties of the Villages, Inc. v. FTC*, 2024 WL 3870380 (M.D. Fla. Aug. 15, 2024).

⁷ Commissioners Ferguson and Holyoak state that these No-Hire clauses must necessarily be analyzed under the rule of reason standard. But as affirmed by a recent Seventh Circuit opinion, some no-poach or no-hire provisions may be horizontal restraints and properly analyzed as *per se* unlawful under Section 1 of the Sherman Act. *Deslandes v. McDonald’s USA, LLC*, 81 F.4th 699, 703 (7th Cir. 2023), *cert. denied*, 144 S. Ct. 1057 (2024). Strangely, Commissioner Holyoak conflates noting that no-hire provisions may be analyzed as *per se* restraints with declaring that they are always *per se* unlawful. The Seventh Circuit noted the former, not the latter. See also Brief for the United States of America & the Fed. Trade Comm’n as Amici Curiae in Support of Neither Party, *Deslandes & Turner v. McDonald’s USA, LLC, et al.*, 81 F.4th 699 (7th Cir. 2023) (Nos. 22-2333 & 22-2334) (“[A]greements among competing employers not to hire or solicit each other’s employees are *per se* unlawful unless defendants establish ancillarity.”).

⁸ Dissenting Statement of Comm’r Andrew N. Ferguson In the Matter of Guardian Serv. Indus., Inc. (Dec. 3, 2024).

those who do become aware of illegal contractual provisions may be unable or unwilling to initiate costly legal proceedings against their boss.⁹

There are circumstances where the Commission should persist with its investigations even when firms appear eager to settle. For example, the Commission should approach skeptically settlements that involve sweeping releases of liability for conduct that has not been fully investigated, or grants of immunity for individual executives whose role is not fully understood.¹⁰ And when further inquiry seems reasonably likely to reveal how conduct may additionally violate the law or warrant distinct relief, continuing with the targeted investigation can be the right call. None of these factors is present here. Accordingly, subjecting Guardian to prolonged Commission investigation even after it has agreed to fully halt the suspected law violation would be inefficient at best.

I am grateful to the FTC team for conducting an efficient investigation and securing an order that will free workers and businesses from undue restraints of trade in an industry that employs hundreds of thousands of Americans.

⁹ See, e.g., Comment Submitted by Victoria Morgan, Non-Compete Clause Rule, *Regulations.gov* (Jan. 12, 2023), <https://www.regulations.gov/comment/FTC-2023-0007-0747> (“[E]ven if these [illegal contract provisions] are unenforceable, . . . who can afford the legal representation to go up against a corporation and their lawyers when the lawsuit threat comes?”); Comment Submitted by Theresa VonAlmen, Non-Compete Clause Rule, *Regulations.gov* (Jan. 18, 2023), <https://www.regulations.gov/comment/FTC-2023-0007-2855> (stating of restrictive contract provisions that “[n]o reasonable employee wants to take on that battle or even can financially take on that battle. So regardless if the clauses are ‘unenforceable’ they are enforced via intimidation.”).

¹⁰ See, e.g., Dissenting Statement of Comm’r Rohit Chopra In re Facebook, Inc. (July 24, 2019), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/dissenting-statement-commissioner-rohit-chopra-regarding-matter-facebook-inc>; Dissenting Statement of Comm’r Rebecca Kelly Slaughter In the Matter of Facebook, Inc. (July 24, 2019), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/dissenting-statement-commissioner-rebecca-kelly-slaughter-regarding-matter-ftc-vs-facebook>.