

Southwest Montana SHRM

Affiliate of the Society for Human Resource Management

Chartered in Bozeman, MT



LEGISLATIVE UPDATE

SEPTEMBER 2024 UPDATE



Grover Wallace – Southwest MT &
Montana State Legislative Director

Southwest Montana SHRM MISSION:

To connect and inspire members to create a collaborative environment for people to do their best work

Federal Judge in Texas Sets Aside FTC’s Noncompete Rule

On Aug. 20, Judge Ada E. Brown of the U.S. District Court for the Northern District of Texas ruled in favor of setting aside the Federal Trade Commission’s (FTC’s) recent Non-Compete Clause Rule. Brown found the FTC’s noncompete rule to be unlawful and said it should not be enforced or otherwise take effect on its scheduled date of Sept. 4 or thereafter. This decision means businesses do not need to comply with the FTC’s rule, and it supersedes other federal court decisions in Florida and Pennsylvania, which had a more limited impact on the rule.

The decision in Texas, rendered in *Ryan LLC v. Federal Trade Commission*, has significant implications for the viability of the noncompete rule. The ruling is significant because the court concluded that the FTC had “exceeded its statutory authority” in enacting the noncompete rule, therefore finding the rule to be unlawful and barring the FTC from enforcing it nationwide. Many of the issues that Brown identified were also raised by SHRM in its April 2023 public comment and multiple amicus briefs submitted to the court.

Specifically, Brown said the FTC chose “to impose such a sweeping prohibition—that prohibits entering or enforcing virtually all noncompetes—instead of targeting specific, harmful noncompetes,” which the court believes undermined the legality of the noncompete rule. Brown added that “the record shows the FTC failed to sufficiently address alternatives to issuing the Rule.”

SHRM LINK ARTICLE: [Court Blocks Effective Date of FTC’s Noncompete Rule for Plaintiffs Only \(shrm.org\)](https://www.shrm.org/advocacy/policy-issues/employment-law/articles/2024/08/20/court-blocks-effective-date-of-ftcs-noncompete-rule-for-plaintiffs-only)

Can, or Should, Employers Prohibit Employees from Wearing Political Gear in the Office?

With a presidential election coming up in three months, politics are a hot topic of conversation nearly everywhere you go—including the workplace. As a result, many employers are considering whether to issue or adjust policies to address civility among employees, set rules for political discussions, and even clarify dress codes.

One common question: Can employees wear political gear into the office or display other paraphernalia supporting a candidate or political cause?

“So long as speech and images are not violating anti-discrimination and anti-harassment laws, political statements and images can legally be permitted in the workplace,” said Karina Sterman, employment partner at Greenberg Glusker in Los Angeles.

But ultimately, employers are allowed to dictate what’s appropriate and allowed, just as they often regulate work hours or have rules about dress codes.

Jeremy Glenn, office managing partner at Cozen O’Connor in Chicago, said that in the private-sector workplace, employees traditionally do not have First Amendment rights to express their political views through office decorations or apparel.

But in the current climate, Glenn said, the definition of what is considered political has broadened to include many topics for which an employee may indeed have the right of expression in the workplace. For example, if employees are joining together to improve their working conditions—such as protesting gender, race, or religious discrimination in the workplace—then wearing so-called political apparel could be protected speech under the National Labor Relations Act. And the act provides such protection even in workplaces where employees are not currently represented by a labor union, he noted.

SHRM LINK ARTICLE: [Can, or Should, Employers Prohibit Employees from Wearing Political Gear in the Office? \(shrm.org\)](https://www.shrm.org/employee-topics/workplace-law/2020/05/15/can-or-should-employers-prohibit-employees-from-wearing-political-gear-in-the-office.aspx)

Calls Continue for Federal Legislation to Prohibit Race-Based Hair Discrimination

Training needed due to state and local CROWN acts

Race-based hair discrimination is prohibited in many states and cities, but there still isn’t a federal law specifically banning such discrimination. Dr. Adjoa B. Asamoah, founder and CEO of ABA Consulting LLC in Washington, D.C., is working to change that. She said conducting training on how to avoid race-based hair discrimination is a good idea in light of the many state and local Creating a Respectful and Open World for Natural Hair (CROWN) acts—legislation that prohibits race-based hair discrimination, including discrimination against employees wearing locs, cornrows, twists, braids, Bantu knots, Afros, or any other hairstyle commonly associated with a race or national origin.

Federal Proposal

Asamoah isn't the only one calling for a federal CROWN Act. On May 1, Rep. Bonnie Watson Coleman, D-N.J., sponsored the reintroduction of a CROWN Act in the U.S. House of Representatives.

Race-based hair discrimination "is more common than many think," said Asamoah, who leads the CROWN Act movement on behalf of the CROWN Coalition. She said such discrimination can lead to offers of employment being rescinded, workers being passed over for promotions, disparate pay, and termination of employment.

Lawmakers who oppose the federal CROWN Act argue that existing laws banning race-based discrimination already apply. For example, Title VII of the Civil Rights Act of 1964 protects workers from discrimination based on race, color, national origin, religion, and sex. At the federal level, the U.S. Equal Employment Opportunity Commission has already challenged grooming and appearance policies for targeting certain hairstyles associated with race, and such policies are facing increased scrutiny from the courts.

SHRM LINK ARTICLE: [Calls Continue for Federal Legislation to Prohibit Race-Based Hair Discrimination \(shrm.org\)](https://www.shrm.org/advocacy/policy-issues/crown-act)

How to Manage Political Discussions in the Workplace

With the presidential election quickly approaching, many workers in the U.S. are bracing for more political discussions at home and work. But telling employees they can't have these discussions may not be the solution.

"It's unrealistic to expect employees to leave their concerns at the door when they sign on for work each day," said Stephanie Neal, director of DDI's Center for Analytics and Behavioral Research, a leadership consulting firm. "If HR teams simply ban political discussion from the workplace, they risk making employees feel silenced, disengaged and distrustful of leadership."

Forbidding employees from talking about politics can have broader implications beyond morale. While employers can prohibit employees from having certain discussions, it's illegal to ban them from talking about their work conditions.

"It's a common misconception that all speech is protected in all places, but the First Amendment right to free speech only protects people from having their speech limited by the government," explained Kara Govro, Principal Legal Analyst at Mineral, an HR and compliance firm. "In the absence of a federal prohibition on doing so, private employers are free to regulate speech in almost any way that doesn't conflict with Section 7 of the National Labor Relations Act or state or local law."

However, Govro acknowledged that without guidelines, political conversations can quickly become disruptive and devolve into activity that does not align with company policies or behavioral expectations.

SHRM LINK ARTICLE: [How to Manage Political Discussions in the Workplace \(shrm.org\)](https://www.shrm.org/advocacy/policy-issues/crown-act)

UPCOMING CALENDAR EVENTS:

OCTOBER 3rd & 4TH – Helena Chapter DEI and Legislative/Legal Seminar

Location: DPHHS – Department of Health and Human Services – 111 North Sanders St. Helena MT

Price: Please see Registration links on the MT SHRM and Helena SHRM web sites

Event: Sessions on DEI and Legislative/Legal updates for Montana

OCTOBER 1-3. MT Arbitration and Labor Relations Conference

Location: Copper King – Butte MT

Price/Registration: \$300

Event: Three-day conference on Labor Relations and Arbitration.

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[Investment Advice Fiduciary Rule Takes Effect](#)

The DOL has finalized the long-awaited fiduciary rule, which aims to modernize and increase investment advice standards for retirement accounts. The rule updates the definition of an investment advice fiduciary under the Employee Retirement Income Security Act and the Internal Revenue Code so that providers adhere to “high standards of care and loyalty” when recommending investments.

SEPT

[National Suicide Prevention Awareness Month](#)

September is Suicide Prevention Awareness Month—an effort to destigmatize suicide, educate the public on the importance of mental health care, and provide prevention resources to those who need them.

WEBCASTS/CONFERENCE SESSIONS

[SHRM Webcasts](#)

[Charting Evolving Workforce Trends: Economic Outlooks for 2024 and Beyond](#)

Sept 12, 2024 2:00 PM EDT

[Workplace Compliance Trends for 2024](#)

Sept 25, 2024 2:00 PM EDT

THANK YOU

