

THE LOOK AHEAD

'Thais' at Utah Opera, Adam Ant at Eccles Theater and Pioneer Theatre performs 'The Great Comet of 1812'

Journalists from across The Tribune newsroom offer a look at events and happenings of interest for the week of May 5-11:

THE SALT LAKE TRIBUNE

'Thais' at Utah Opera, May 4-12 » Grand opera doesn't get more grand than "Thais," Jules Massenet's epic tale of ancient Egypt, of a monk who meets a beautiful courtesan and tries to save her soul from her hedonistic life. Utah Opera is performing "Thais" for the first time, with soprano Nicole Heaston in the title role, the Utah

Symphony performing and a 40-person choir performing the score — with concert master Madeline Adkins performing the violin solo "Meditation" — and dancers from Repertory Dance Theatre also taking the stage. The production was set to open Saturday, May 4, with performances on Monday and Wednesday at 7 p.m., Friday at 2:30 p.m., and again next Sunday at 2 p.m. Tickets available at UtahOpera.org.

Ant Music returns, May 5 » The English New Wave singer Adam Ant is set to turn 70 in November, but age isn't keeping him off the stage. Ant — known for such '80s hits as "Stand and Deliver," "Goody Two Shoes" and "Strip" — is on tour, arriving Sunday at the Eccles Theater, 131 S. Main, Salt Lake City. Opening act is The English Beat. Show starts at 8 p.m. Tickets available at live-at-the-eccles.com.

The Great Comet of 1812 » Pioneer Theatre Company ends its season with a big musical with a long title: "Natasha, Pierre

& The Great Comet of 1812." Composer/lyricist/playwright Dave Malloy took a 70-page aliver of Leo Tolstoy's "War and Peace" to tell the story of depressed Pierre, whose friend Andrey is engaged to Natasha — who finds herself instead attracted to Anatole, Pierre's brother-in-law. The production starts Friday and runs through May 25 at Pioneer Memorial Theatre, 300 S. 1400 East, Salt Lake City, on the University of Utah campus. Tickets available at pioneertheatre.org.

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How a new ban on noncompete employment contracts could mean more money for Utahns

New rules from the Federal Trade Commission will limit how employers use noncompete agreements.

What do California, North Dakota, Minnesota, and Oklahoma have in common? Those four states have banned noncompete agreements between employers and employees.

That list makes you appreciate that this isn't an issue stuck in partisan politics. The idea that a person should be able to work where they so choose is one that appeals to both free-market conservatives and worker-protection liberals.

Other states have been limiting the enforcement of noncompetes in recent years. In 2016, Utah's HB251 decreed that noncompetes must be a year or less — anything beyond that would be considered illegal.

ANDY LARSEN

Now, the Federal Trade Commission has gone further, and applied a new rule to all 50 states that will go into effect in early September. Essentially, it bans all future noncompetes. Furthermore, it retroactively negates all noncompetes that have already been signed, with the exception of senior executives making over \$151,000 annually. (Non-execs with big paychecks will also lose their current noncompetes.)

Finally, businesses have to actively tell their employees — by text, mail, email, or delivered on paper by hand — that their noncompetes are no longer enforceable.

This is big change. Businesses are divided on it. Some say that noncompetes allow them to invest in their employees' training more, knowing they can keep them locked in for a period. Other businesses want to open up the playing field and compete for labor talent through wages, benefits, culture, perks, and so on.

Workers, though, are pretty uniformly in favor of the move. Of the 26,000 comments the FTC received during its public comment period (from both businesses and workers), over 25,000 of them were in favor of banning noncompetes.

In issuing the rule, the FTC released a 570-page document. Many outlets have called this a 570-page rule, but the rule part of it is only really nine pages. That, though, is preceded by 561 pages of a surprisingly readable and scientific explanation of why they're choosing to ban noncompetes — that'd encourage you to read if you have infinite time and a hankering to

understand why the FTC does stuff. For everyone else, that's why this column exists.

Noncompetes a 'pernicious force'

A surprising number of people are employed with a noncompete clause of one kind or another. The FTC estimated it at about one in five workers. I didn't know that 45% of physicians have a noncompete clause, along with a similar number of veterinarians. I also wouldn't have suspected that 30% of hairstylists do.

A surprising number of low-income workers have noncompetes: 13% of workers who make under \$40,000. Meanwhile, 53% of those with noncompetes are hourly workers. Big businesses frequently use noncompetes: one survey indicated 32% of employees with more than 50 employees use them for all of their employees. Low-paying businesses do too: 29% of businesses where the average wage is below \$13 per hour use noncompetes for all their workers.

Signing a noncompete has a downside of becoming, as the FTC writes, a major "pernicious force" in one's life, forcing one to "make choices ... detrimental to their finances, their careers, and their families." The comments to the FTC have all sorts of stories like that.

One bartender making \$10 an hour said her employment contract signed on her first day had a noncompete clause she wasn't aware of. When she was sexually harassed at her job, she left for another bar — and was promptly sued for \$30,000.

A cardiologist reported that his small health care practice was acquired by a larger firm, as the firm asked the doctor to sign noncompete clauses, but ended up pushing them out the door in favor of other doctors. The cardiologist's patients had to decide between trusting a new set of doctors or driving over an hour away to continue their current care. Another doctor said he had a similar occurrence, and found that his patients simply couldn't afford to drive that far.

A geologist said she was able to find a part-time job in her field out of college, but was let go. Because of her noncompete, she couldn't take another job in her field in her location and instead took a job as a waitress.

Oh, and many comments from multiple industries wrote about how they were forced to move their families, or move away from family, so that they could continue to provide income without violating their noncompete agreements.

On one hand, yes, these are agreements signed by these workers. But many reported their companies used unethical practices to induce workers to sign them: hiding them in boilerplate language, presenting them after an employee had already left



Dr. Rachel Walton cradles a cat named Spot as she waits for the anesthesia to take effect before taking a few skin biopsies on Oct. 28, 2022. Veterinarians, pet owners unexpectedly, are frequently limited in their employment options by noncompete clauses.

their previous job, or even introduced while they worked their current one.

Just on this point alone, the FTC reasoned it would be reasonable to ban noncompetes.

Economic benefits of banning noncompetes

But the FTC also calculated that this would bring significant benefits to the economy as a whole if they banned noncompetes. Among them:

Wage increases

The FTC relied on a pretty significant body of academic work that showed that people's wages went up when noncompetes weren't enforceable or didn't exist. Theoretically, this makes sense: If people have more leverage to leave their job, they can demand raises or simply find higher-wage employment.

The largest study referenced, for example, looked at wage data nationally from 1991 to 2014, comparing states with various noncompete laws, and estimated that wages went up by 3% to 14% if noncompetes were banned.

When Oregon banned noncompetes for hourly workers, wages went up 2.3% there overall, and 4.6% in industries that frequently use noncompetes. Interestingly, wages went up for 3.5% for women and 1.5% for men. A Hawaii ban on noncompetes for tech workers raised those wages by 4%.

There's also significant evidence that banning noncompetes raises wages even for people who don't have them, thanks to making the labor market more competitive.

In the end, the FTC conservatively estimated that banning noncompetes would increase wages by 0.86%.

For Utah specifically, the FTC said banning noncompetes would mean \$715,807,809 in increased worker wages, for an average of \$542 per worker. (This includes both workers with and without noncompetes.)

More business creation

Because noncompetes typically prevent workers from starting new businesses to compete with their current ones, they have a significant distributional effect on the economy. Essentially, noncompetes limit the number of small, new spinoff businesses in favor of bigger, more established companies.

There's a significant argument that this hurts the economy as a whole. Many tech historians argue that California's law prohibiting noncompetes is the major reason Silicon Valley is the epicenter of the tech boom — a claim that I thought was a little preposterous at first, until I learned that 70% of Silicon Valley stocks listed on the NASDAQ have roots as spinoffs of one 1960s-era semiconductor company.

One point of evidence for this came from Utah. When Utah limited noncompetes in the mid-2010s, one study found entrepreneurship and self-employment increased by 5.6%. Similar changes came to Hawaii and Massachusetts, when they limited noncompetes.

Overall, the FTC estimates that banning noncompetes will increase new firm creation by 2.7-3.2%.

Furthermore, more patents tend to be filed in states with noncompete limitations, as workers have more ability to chase profits on their own ideas. The FTC estimates this will increase the number of patents filed by 11-18%.

Lower prices

Those two above economic results will have differing forces on inflation. On one hand, wages going up means companies will increase their prices. On the other hand, more competition and technological innovation in the market from new competitors in the market should mean lower prices.

Which one will win? It probably depends on the industry and how competitive — or non-competitive — it currently is.

It currently is. The FTC identified health care as an industry ripe with potential for innovation and new players, especially at the most infirmite,

doctor-patient level. Studies in states with noncompete limitations indicate that prices decrease significantly for health care in those areas. Overall, the FTC estimated that prices will decrease for physician and clinical services overall by \$74-\$194 billion over the course of 10 years, no small downward adjustment.

Other industries weren't as closely studied, so the FTC made no claims about lower prices there. But they hoped that the ban on noncompetes would result in higher worker productivity overall, thanks to better worker-firm matching, which would lead to better prices down the road.

Changes in institutional investment

While this article has been very rosy about the ban so far, it's worth noting the major criticisms. In particular, noncompete proponents argue that the contracts allow for more big-money investment into firms and more educational investment within firms for training employees. The rationale is that investment is more likely to be recouped in a world where employees can't leave after receiving it.

It was an interesting element of Utah's 2016 debates on the topic. As workers' power came to the House and Senate committees on the issue to say how noncompetes had impacted them, business owners argued that they'd reduce their spending on training their employees as a result of any change. That may "be" true, but training can also function as a differentiator in a competitive labor market.

To their credit, the FTC incorporated these costs in their decision, but simply decided the pros outweighed the cons. I thought economic commentator Noah Smith wrapped this up well.

Overall, more about the type of economy we think will be better overall. An economy with strong noncompetes will be a little more like Japan — workers will be better trained but will switch jobs less and make lower wages, big dominant companies will do more R&D but disrupt new startups will be shut out of the market by lack of personnel," he wrote. "It's about the choice between a competitive economy and one dominated by huge secure companies. Personally, observing the outcomes in both the U.S. and Japan, I'm inclined to go with the former."

We'll see what happens here overall — the U.S. Chamber of Commerce has already filed suit against the FTC for the action, and it's possible a court stays the ban. But I think that'd be shortsighted. When you take into account the negative impacts noncompetes have had on workers' lives, add in the likely positive impacts on the economy as a whole, banning noncompetes seems like a definite win.

Andy Larsen is The Tribune's data columnist. He can be reached at alarsen@sltrib.com

CORRECTION

» The correct price for Eight Settlers Distillery's Mother's Day brunch buffet is \$69 for adults. A story that ran in April 28's Mix stated otherwise.

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