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Biden Administration Targets Non-Competes

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Melody B. Lynch

On July 7, 2021, White House Press Secretary Jen Psaki divulged President Biden intends to sign a new executive order in the coming days addressing competition in the labor market, in part by targeting non-compete clauses and agreements. Non-compete clauses or agreements are contractual in nature and usually consist of an employee's promise not to compete with his or her employer while employed as well as for a specific time after the employment ends. Non-competes are also usually limited to a certain geographic area and scope of business. They can also include a promise not to solicit the employer's clients or work for the employer's competitors. Florida law generally upholds non-compete agreements that place reasonable restrictions on the time, geography, and area of business covered by the non-compete so long as one or more legitimate business interests justify the non-compete.

Secretary Psaki stated "roughly half of private sector businesses require at least some employees to enter non-compete agreements, affecting over 30 million people." Psaki specifically mentioned the construction and hotel industries as examples of industries where blue-collar workers may be unfairly impacted by non-compete agreements.

The current administration believes some non-competes and occupational licensing requirements may unnecessarily restrict free competition and overly burden workers. Psaki noted unnecessary or overly burdensome licensing requirements can "lock people out of jobs" and that almost 30% of jobs require a license of some sort. Given the administration's focus on increasing competition in the labor market, businesses may have to revise existing non-compete agreements or clauses depending on what the Federal Trade Commission ("FTC") proposes as the forthcoming executive order is expected to call on the FTC to adopt new rules that "curtail non-compete agreements" and "ban unnecessary occupational licensing requirements."

The executive order is also expected to call for limits to the ability of employers to share information on workers' pay with each other by encouraging the FTC and the Department of Justice to collaborate on restricting such sharing, ostensibly to prevent potential collusion between

employers regarding worker pay.

At this time, there are no further details regarding which employers may be impacted by the executive order and how, let alone the impact of any future rules and regulations the FTC may promulgate in response to the order.

We will continue to monitor for new developments and provide updates and analysis as soon as the expected executive order is issued. As always, we stand ready to advise our friends and clients how these developments may impact their existing non-compete clauses and agreements and assist with navigating any new developments impacting the same.

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