

FTC Seeks Ban on Non-Competes

The Employer Lawyers Blog
01.13.2023

On January 5, 2023, the Federal Trade Commission (FTC) proposed a rule that is essentially a blanket ban on non-competes per Section 5 of the FTC Act which prohibits unfair competition. If implemented, the new rule would not only restrict employers from utilizing non-competes within their workforces but would further require previously entered non-competes to be rescinded by individual notice to affected employees and former employees.

Under the rule, an employer would be prohibited from preventing a “worker from seeking or accepting employment with a person, or operating a business, after the conclusion of the worker’s employment with the employer.”

Although wide-reaching, there is a silver lining. The proposed rule does not affect non-disclosure agreements or non-solicitation agreements, except where such a clause is “written so broadly that it effectively precludes the worker from working in the same field after the conclusion of the worker’s employment with the employer.”

The proposed rule contains a “sale of a business” exception limited to an owner, member or partner holding at least 25% ownership interest in a business entity.

If adopted, the proposed rule would apply to both employees and independent contractors and would supersede Florida Statute, Section 542.335, which permits employers to utilize non-competes as a means to protect its legitimate business interests.

The proposed rule follows an executive order signed by President Biden in July 2021 addressing competition in the labor market, in part by urging the Federal Trade Commission (FTC) to research restrictions on non-compete agreements ([link to our prior article](#)).

The FTC says that the rule will take effect 180 days after the final version is published, but legal challenges are likely to delay implementation of the rule. The comment period is open now through March 10, 2023. Affected employers and employees are able to provide comments to the FTC about

Related Attorneys

[Rachel D. Gebaide](#)

[Melody B. Lynch](#)

the proposed rule.

Studies show that approximately 30 million workers would be affected by this rule, and most U.S. employers would also be affected. Non-competes are generally used to protect the investment that employers make in their businesses and employees.

We will continue to monitor the situation for new developments, including legal challenges over the FTC's authority to issue such a broad sweeping ban on non-competes in the United States. If you are concerned about how this new rule could impact your business, please reach out to Melody Lynch or Rachel Gebaide to discuss how our employment law team can best address these issues for your business.