



## **FEDERAL TRADE COMMISSION'S NEW FINAL RULE BANS NONCOMPETES**

After a 3-2 vote on April 23, 2024, the Federal Trade Commission (FTC) issued a final rule establishing a nationwide ban on the use of noncompete agreements. In its final rule, the FTC determined that noncompete agreements are an unfair method of competition. Therefore, entering into such agreements with workers and enforcing certain noncompete agreements violate Section 5 of the FTC Act.

According to a press release issued by the FTC upon the approval of the final rule, the agency expressed that the ban seeks to promote competition, protect workers' freedom to change jobs, and foster the creation of new jobs. The FTC estimates that the final rule banning noncompete agreements will lead to a yearly 2.7% growth of new business and the creation of approximately 8,500 new businesses annually. The FTC estimates that one in every five Americans, approximately thirty million workers, is subject to a noncompete.

The following are some of the final rule's significant takeaways:

- Existing noncompete agreements for most workers will no longer be enforceable after the rule's effective date: 120 days after its publication in the Federal Register.
- Existing noncompete agreements for senior executives will remain in force, but employers will be banned from entering or attempting to enforce any new noncompetes, even for senior executives. The final rule defines "senior executives" as workers earning more than \$151,164 annually in policy-making positions.
- Employers will have to notify workers, other than senior executives, bound by an existing noncompete agreement that they will not be enforcing noncompete agreements against them. The final rule contains model language employers may use to comply with this requirement.
- Trade secret laws and non-disclosure agreements (NDAs) will be allowed to protect employer's proprietary and sensitive information.
- The ban does not apply to noncompete agreements entered by a person during the "*bona fide* sale of a business" of a person's ownership interest in a business entity or of all or substantially all of a business' operating assets.

The U.S. Chamber of Commerce has already vowed to challenge the final rule in court. If it does, and a court enters a temporary restraining order or preliminary injunction, implementing the final rule may be delayed while the matter is pending.

If you have questions or need assistance regarding the new final rule and how it impacts your business, please contact one of our attorneys.

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