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FTC Announces Final Rule on Non-Competes

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On April 23, 2024, the Federal Trade Commission (FTC) released its final rule concerning non-competition agreements. In the final rule, the FTC determined "that it is an unfair method of competition, and therefore a violation of Section 5 of the FTC Act, for employers to enter into non-competes with workers and to enforce certain noncompetes."

The final rule has broad and sweeping implications. Workers covered under the final rule include full-time or part-time employees, independent contractors, interns, externs, volunteers, apprentices, and others. Employers in nearly all industries are subject to the requirements of the final rule, except for those specifically outside of the FTC's jurisdiction, such as banks, savings and loan institutions, federal credit unions, common carriers, air carriers, and certain non-profits.

Once the final rule takes effect, existing non-competes, except for those involving a "senior executive," will be unenforceable. Prospective non-competes, even those involving senior executives, will also be unenforceable.

Critically, employers are required to notify workers bound to an existing noncompete that the noncompete agreement will not be enforced against them in the future.

A "non-compete" is a term or condition, often in an employment contract, that prohibits, penalizes, or functionally prevents a worker from getting a different job or starting a business after leaving their employment.

Here's what that means:

- Prohibits: Terms and conditions expressly saying that a worker can't get another job, such as with a competitor, or start a business.
- Penalizes: Terms and conditions that require a worker to pay a penalty if they get another job or start a business.
- Functionally prevents: Terms and conditions that aren't labeled as noncompetes but are so restrictive that they effectively prevent a worker from getting a new job or starting a business.

A "senior executive" is a worker who "earn[s] more than $151,164 in compensation [for the] year and is in a 'policy-making position.'"

The final rule does not prohibit the enforcement of non-competes entered into pursuant to a bona fide sale of a business entity, sale of ownership interest in a business entity, or sale of all or substantially all of a business entity's operating assets.

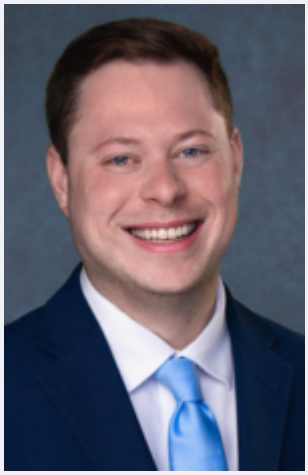
The final rule takes effect 120 days after it is published in the Federal Register. The FTC believes that the effective date will likely be in early September of 2024.

Ultimately, the final rule may be subject to legal challenges, which could impact its implementation.

The FTC's press release can be found here.

The final rule can be found here.

If you have any questions about this rule or any other labor & employment issue, please contact your Knox Law attorney, our Labor & Employment group, or call us at 814-459-2800.



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