

FTC ENACTS BAN ON NONCOMPETE AGREEMENTS ACROSS INDUSTRIES

Another impactful development comes from the Federal Trade Commission (FTC), which has enacted a ban on noncompete agreements across industries. This rule represents a significant shift in how businesses approach employment contracts and competition restrictions. The implications of this ban extend to employers and employees alike, requiring a reassessment of existing agreements and alternative measures to protect business interests. Navigating this change requires careful consideration of legal implications and strategic adjustments to employment practices. Understanding the scope and implications of this new rule is essential for businesses to adapt and comply effectively.

Noncompete Clause Rule

The Federal Trade Commission's (FTC) new [Noncompete Clause Rule](#), effective 120 days after publication in the Federal Register, significantly restricts the use of noncompete agreements by employers. (Note – The regulation's effective date is 120 days after Federal Register publication which has not taken place as of this date.) The rule defines a "noncompete clause" as a contractual term that restricts a worker from working for a competing employer or starting a competing business within a specified geographic area and timeframe after the worker's employment ends.

Key Details:

- The final rule prohibits employers from entering into noncompete agreements with most workers, including senior executives earning less than \$151,164 annually.
- Existing noncompetes with senior executives meeting the earnings threshold can remain valid. However, noncompetes with other workers will no longer be enforceable after the effective date.
- The final rule applies to noncompete agreements with both employees and independent contractors.
- The rule includes an exception that allows for noncompete agreements between the seller and buyer of a business.

- Employers are required to notify workers whose noncompete agreements are no longer enforceable that their agreements are no longer in effect and will not be enforced.

The FTC estimates that banning noncompetes will lead to reduced healthcare costs, increased business formation, and higher worker earnings, fostering economic growth and innovation.

Market participants can report suspected violations of the rule to the Bureau of Competition via email once the rule is effective.

Implications and Considerations:

Employers must review existing noncompete agreements and assess their enforceability under the new rule.

In the meantime, consider adopting alternative measures to protect business interests, such as non-solicitation agreements or confidentiality agreements that do not function as de facto noncompetes. In a statement on April 23, 2024, the FTC stated “Trade secret laws and non-disclosure agreements (NDAs) both provide employers with well-established means to protect proprietary and other sensitive information. Researchers estimate that over 95% of workers with a noncompete already have an NDA.”

Additionally, the proposed rule does not explicitly ban customer non-solicitation agreements, or employee non-solicitation agreements so long as they do not have the same functional effect of noncompete clauses.

Legal Challenges and Potential Outcomes:

The FTC's noncompete rule faces legal challenges from business advocacy groups, which could potentially delay or invalidate its enforcement.

The Chamber of Commerce criticized the FTC's decision and argued that this action exceeds the FTC's legal authority and represents a significant overreach that could harm American businesses' competitiveness. The Chamber, along with other business groups, filed a lawsuit in the U.S. District Court for the Eastern District of Texas asserting that the FTC lacks the constitutional and statutory mandate to create rules on competition, including those related to noncompete agreements.

Their lawsuit contends that regulating noncompete agreements falls within the purview of individual states, not federal agencies like the FTC.

It remains uncertain whether the Chamber of Commerce will seek an injunction to temporarily halt the implementation of the noncompete rule pending the outcome of the legal challenge.

Next Steps for Employers

Navigating this new regulation requires proactive engagement to ensure compliance and mitigate potential risks. By evaluating workforce practices, communicating effectively with employees, and staying abreast of legal developments, business owners can adapt their strategies to align with evolving legal standards and protect their business interests effectively.

Understanding the nuances of this law and seeking appropriate legal counsel when appropriate will be essential for navigating the complexities of the regulatory landscape and ensuring the continued success of your business.

We will continue to monitor developments closely and keep you informed of any updates or changes that may impact your business.

For More Information

If you have any questions, please contact our HR team at **210-775-6082**, toll-free at **1-888-757-2104**, or HRmanagement@BFGonline.com.



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