



Client Bulletin

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Impending
Nationwide Ban on
Employer Non-
Competes

Impending Nationwide Ban on Employer Non-Competes

On April 23, 2024, the Federal Trade Commission (“FTC”) announced a final rule (“Rule”) that places a nationwide ban on employer non-compete agreements. That is, agreements employers have with current and former employees prohibiting employees from working for a competitor or creating a business that competes with the employer will no longer be enforceable. With very few exceptions, employers with non-compete agreements with current and former employees will have to rescind those agreements.

Key Provisions of the Rule

The Rule prohibits not only non-compete agreements, but agreements that function like a non-compete agreement by using contractual language that does not expressly cite to a prohibition against competition. Examples include a broadly written non-disclosure agreement that effectively prevents the employee for working for another employer or an agreement to repay training costs that makes it nearly cost-prohibitive for an employee to leave the employer.

Existing non-competes for senior executives may remain in force. “Senior executives” are workers who earn more than \$151,164 annually *and* make policy decisions. Non-competes for all other employees are prohibited. Future non-competes for senior executives are also prohibited. The Rule does not apply to most non-profits as well.

The Rule has retroactive effect. Employers must provide notice to workers currently bound to an existing non-compete that the non-compete will not be enforced against them in the future.

Trade secret laws and the laws on non-disclosure remain enforceable. Non-compete agreements entered into as a part of the sale of a business also are not affected by this Rule.

Non-solicitation Agreements

The Rule does not prohibit non-solicitation agreements (agreements prohibiting former employees from soliciting the former employer’s customers). However, if a non-solicitation agreement is so broad that it has the same functional effect as prohibiting a worker from seeking or accepting other work or starting a business, then the non-solicitation agreement will be viewed as a prohibited non-compete agreement. Additionally, an employer can still protect its confidential information/trade secrets with non-disclosure agreements.

Effective Date of The Rule

The Rule will become effective 120 days after the Rule is published in the Federal Register (which has not happened as of April 30, 2024 but is anticipated to happen within a matter of days or weeks.) However, it is widely anticipated that this Rule will be challenged in court and that a court may issue an injunction holding the Rule’s enforcement in abeyance until the legality of the Rule is litigated. Regardless, employers may want to be proactive in analyzing what non-competes they currently have in place and how they will want to revise their employments to come into compliance with this law if/when it becomes effective.

For more information about this new Rule or any matters related to employment agreements, please contact Stacy Pollock (spollock@mmpdlaw.com) or Dennis Pergam (dpergram@mmpdlaw.com) with Manos, Martin & Pergam.

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