



Electronic Alert

Volume 26, Issue 2

January 6, 2023

FTC Proposes Ban on Non-Competes

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Non-compete agreements between employers and employees may soon be a thing of the past. The Federal Trade Commission (FTC) issued a sweeping proposal that would ban almost all non-compete agreements with limited exceptions. If the rule goes into effect, it will have major implications for employers and workers.

The FTC's proposed rule would prohibit employers from entering into or attempting to enter into a non-compete clause with a worker; maintaining a non-compete clause; or representing that a worker is subject to a non-compete clause absent a good faith basis to believe the worker is subject to an enforceable non-compete clause. The rule will require employers to rescind all existing non-compete provisions with current and former workers and provide notice to the worker that the non-compete provision has been rescinded.

Notably, the proposed rule would also ban any contractual term that is a *de facto* non-compete clause, such as a broad non-disclosure agreement that effectively precludes a worker from working in the same field after the end of their employment. Non-solicitation clauses seem to be in the clear, so long as they are not written so broadly as to be deemed a *de facto* non-compete clause.

Oregon already imposes significant restrictions on non-competes, including their use among lower-paid employees, but the FTC's proposed rule would preempt state law and extend to all workers, whether paid or unpaid, regardless of the income level.

The rule does not take effect immediately and legal challenges are likely. There will be a 60-day comment period on the proposed rule and the new rule would go into effect 180 days after the final rule is published. In the meantime, employers with existing non-competes should be aware of the potential impact of the proposed rule and consult with employment counsel regarding how to incorporate potential alternatives, such as non-solicitation and confidentiality agreements, in order to ensure that trade secrets and client relationships are protected should this proposal become the law of the land.

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