April 24, 2024

FTC Adopts Near-Total Ban on Noncompete Agreements

On April 23, the Federal Trade Commission (FTC) voted 3-2 to issue a final rule banning nearly all noncompete agreements. The rule will take effect 120 days after its publication in the *Federal Register* (which has not yet occurred). The FTC released a fact sheet on its Proposed Final Noncompete Rule.

The final rule prohibits employers from enforcing existing noncompete agreements with all workers except senior executives who have noncompete agreements that are in effect as of the final rule's effective date. Except as to those senior executives, the final rule will require employers to provide notice to workers that their noncompete agreements are unenforceable after the effective date of the final rule. The final rule further prohibits employers from entering into new noncompete agreements on or after the effective date with all workers, including senior executives.

The noncompete ban includes several notable exceptions. It does not apply to workers for nonprofit organizations, to agreements between franchisors and franchisees, or to business owners in connection with the sale of a business.

The final rule follows the FTC's issuance of a notice of proposed rulemaking in January 2023. During the public comment period following that notice, the FTC reported that it received more than 26,000 public comments regarding the proposed rule, more than 25,000 of which supported banning noncompetes.

The Chamber of Commerce of the United States of America and other business groups filed a complaint in the United States District Court for the Eastern District of Texas seeking declaratory and injunctive relief against the FTC relating to the final rule. Questions exist as to whether the FTC exceeded its delegated authority in implementing this final rule. Before the final rule becomes effective, the FTC may continue to take aim at anticompetitive practices at companies. In light of this final rule and the nationwide movement seeking to curtail the use of noncompetes, employers need to carefully review existing noncompetes. Employers should further consider whether there are legitimate business interests that necessitate that senior executives be bound by noncompetes, as the ability to enter into these agreements will be restricted if the final rule goes into effect. Further, as always, employers should consider implementing restrictions and contractual obligations that are not governed by the final rule in order to protect confidential and trade secret information and relationships with clients and employees.

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