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Biden Administration Seeks To Curtail Non-Compete Agreements

On June 9, President Joe Biden issued his Executive Order on Promoting American Competition in the Economy. The Executive Order proclaims to “promote the interests of American workers, businesses, and consumers.” While the Executive Order covered many different policy goals across various industries, employers should note that it specifically discussed non-compete agreements.

What Does The Executive Order Say About Non-competes?

The Executive Order instructs the Federal Trade Commission (FTC) “to curtail the unfair use of non-compete clauses and other clauses or agreements that may unfairly limit worker mobility.” The purported goal of this instruction is to address agreements that may “unduly limit workers’ ability to change jobs.” In a fact sheet leading up to the Executive Order, the Biden Administration claimed that the goal of this initiative is to “make it easier to change jobs and help raise wages by banning or limiting non-compete agreements...that impede economic mobility.”

Are Non-compete Agreements Now Illegal?

No, the Executive Order is not a federal ban on non-compete agreements. Notably, the Executive Order itself does not have any legal impact. It merely instructs the FTC to consider this issue.

The Executive Order is most notable because it reflects the Biden administration’s policy goals and a desire to restrict the use of non-competes. This sentiment is consistent with changes in many states where legislatures are restricting such agreements. Most recently, Oregon, Nevada, and Illinois have proposed or passed bills curbing the use of non-competes.

What Happens Next?

How the FTC will interpret instruction to curtail the use of noncompetes remains to be seen. While the FTC has power to engage in a rule-making process, there is an open question about the scope of its authority to regulate, or even ban, non-competes. A full ban may have to come from federal legislation. Whether the Administration will pursue that route remains to be seen.

Frost Brown Todd will continue to provide updates if there are any developments in the FTC or otherwise. While we wait to see what steps the FTC and Congress might take with respect to non-compete agreements, employers may want to take this time to review their non-compete agreements and make sure they comply with the current state of the law in their location and remain narrowly tailored to protect the company's legitimate business interest. It is also a good time to make sure that your company is taking adequate and appropriate steps to protect its confidential trade secret information.

For more information concerning the Executive Order on Promoting Competition in the American Economy, non-compete agreements, or other restrictive covenants, please feel free to reach out to [Tessa Castner](#), [Ashley Olier](#), [Richard Moore](#), [David Skidmore](#), or any attorney in Frost Brown Todd's [Labor and Employment](#) group.

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