Federal Trade Commission Issues Final Rule Banning Non-Compete Agreements, Prompting Immediate Litigation Blocking Enforcement. What Does It Mean For Your Business?

Apr 24, 2024

Categories:

Restrictive Covenants

Authors:

Christine A. Amalfe

On April 23, 2024, the Federal Trade Commission (FTC) issued a final rule banning all future and most existing non-compete clauses, with few narrow exceptions for senior executives. The rule, however, was immediately met with legal challenges, casting doubt on its future.

The FTC has taken the position that entering into a non-compete agreement is an "unfair method of competition" within the meaning of the Federal Trade Commission Act, therefore rendering non-competes unlawful as a general matter.

The FTC reasons that a non-compete ban was necessary to address conduct harming fair competition in the labor market, reducing wages, stifling innovation, and hindering business formation and entrepreneurship. Further, the FTC argues that the current state law approach, which assesses the enforceability of non-competes on a case-by-case basis, has not sufficiently addressed the competition concerns cited by the FTC.

On the other hand, opponents of the FTC's non-compete ban argue that the rule exceeds the commission's statutory and constitutional authority and that non-competes are crucial in guarding an employer's trade secrets, intellectual property, and significant investments in employee training and development.

Key components of the final rule are:

- It is an "unfair method of competition" for any worker and an employer to enter into, or attempt to enter into, a non-compete clause, to enforce a non-compete clause, or to

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

represent that a worker is subject to a non-compete clause.

- Existing non-competes entered into between employers and "senior executives" before the effective date of the rule may remain in force, but all other existing non-compete agreements will be rendered unenforceable.
- Employers are required to give notice via either mail, email, or text message that the non-compete clause cannot legally be enforced and will not be enforced against the worker within 120 days of the rule's publication in the Federal Register.

The carve-out for existing non-competes with senior executives is exceedingly narrow. The rule defines senior executive as a worker who, in the preceding year, was: (1) in a policy-making position; and (2) received total annual compensation of at least $151,164 inclusive of salary, commissions, bonuses, and other non-discretionary compensation. The rule further defines "policy- making position" as a business entity's president, chief executive officer or equivalent, any other officer of a business entity with policy-making authority, or any other natural person who has policy-making authority for the business entity similar to an officer with such authority.

Under the rule, "policy-making authority" means final authority to make policy decisions that control significant aspects of a business entity or common enterprise. A worker does not have policy-making authority where that authority is only limited to advising or exerting influence over such policy decisions.

The rule *does not* apply to non-competes entered into pursuant to a bona fide sale of a business entity and provides a good faith exception for employers who enforce or attempt to enforce a non-compete where good faith basis exists to believe that the rule is inapplicable.

This unprecedented action by the FTC was immediately met with legal challenges from the business community. On the same day the rule was issued, a lawsuit was filed in the Northern District of Texas seeking declaratory relief, arguing that the rule exceeds the FTC's statutory authority under the Administrative Procedures Act (APA). The United States Chamber of Commerce has also announced its intention to immediately sue to block the rule.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

Though the new rule represents a major upheaval, no immediate action is required by employers. By its terms, the rule does not go into effect until 120 days after the rule is published in the Federal Register, and, given the unfolding legal challenges, the rule may never take effect. We are closely monitoring the status of these legal developments and will provide updates as necessary.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons