

NEWS & INSIGHTS

FTC proposes rule abolishing non-compete agreements

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The U.S. Federal Trade Commission has unveiled a proposed rule that would prohibit employers from entering into non-compete agreements with their workers and require employers to rescind non-competes with all current and former workers.

The [proposed rule](#) amounts to a blanket prohibition of non-compete agreements, both prospectively and retroactively. The FTC provides for only one limited exception involving non-compete agreements for the sale of a business. That exception would be applicable only where the party subject to the non-compete is an owner, member or partner holding at least a 25 percent ownership interest in a business entity.

The proposed rule would apply to “workers,” including employees, independent contractors, interns, volunteers and sole proprietors. However, these workers would not be able to seek damages under the proposed rule as it does not provide for a private right of action. Rather, the FTC would have sole enforcement power.

Under the Biden Administration, the FTC has repeatedly sought to roll back employers’ ability to independently negotiate terms of employment with their workforce. The proposed rule is perhaps the most significant manifestation of these efforts. It would fundamentally alter an employer’s ability to benefit from investments it makes in its workers. By contrast, the FTC views non-competes as an unlawful restraint on a worker’s inherent freedom to change jobs.

The proposed rule is now [subject to a public comment period](#) through March 10. At that time, the FTC can finalize the rule either as proposed or subject to further revision. As currently drafted, the proposed rule says the FTC would seek to enforce any final rule not earlier than 180 days after its publication in the Federal Register. Thus, the FTC’s enforcement of the ban on non-competes would likely not take effect until, at the earliest, late summer/early fall of this year. Enforcement could be further delayed by legal challenges to the FTC’s authority to enact this rule pursuant to the FTC Act.

Employers should use this opportunity to develop or strengthen their non-solicitation and confidentiality agreements, as the proposed rule notes that it is not intended to prohibit these agreements provided they are reasonable. Saxton and Stump attorneys [Steve Fleury Jr.](#) and [Rick Hackman](#) are available to further discuss how your investments in your workforce may continue to be protected.

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