

NEWS & INSIGHTS

FTC seeks nationwide ban on noncompete agreements for nearly all workers

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The Federal Trade Commission on Tuesday voted 3-2 to ban noncompete employment agreements nationwide. Employers will not only be prohibited from entering into new noncompetes with their workers, but employers will also be prevented from enforcing existing noncompetes against current and former workers, with only a very limited exception applying to “senior executives.” Under the FTC’s rule, employers are also required to provide notice to all affected current and former workers advising them that their noncompetes are no longer enforceable.

The FTC's rule defines "senior executives" as those workers earning greater than \$151,164 annually who are employed in a policy-making position. This category of workers is narrowly defined, and the FTC estimates that less than 1% of all workers fall within this category. Significantly, going forward, employers will no longer be able to enter into noncompetes with any workers, including "senior executives."

The FTC's rule also mandates that prior to the effective date of the rule – August 22, 2024 or later – employers must provide "clear and conspicuous" written or electronic notice to current and former workers subject to a noncompete that the clause is no longer in effect and may not be enforced against them (omitting senior executives).

The FTC estimates that about one in five American workers – about 30 million workers – are subject to a noncompete, and that eliminating noncompete agreements [will lead to more than 8,500 new business formations each year](#). The Biden administration has targeted noncompete agreements for years, saying they suppress a person's right to work and move to another company willing to pay more for their services.

Proponents of noncompete agreements, however, worry about larger companies poaching good employees from smaller companies that cannot match the same wages, benefits and perks that larger ones offer.

While [the rule](#) is slated to go into effect in late August, it is already receiving harsh criticism, and the U.S. Chamber of Commerce almost immediately announced it would sue the FTC for passing the "unlawful" rule.

"This decision sets a dangerous precedent for government micromanagement of business and can harm employers, workers and our economy," U.S. Chamber of Commerce President and CEO Suzanna P. Clark said in a statement. "The Chamber will sue the FTC to block this unnecessary and unlawful rule and put other agencies on notice that such overreach will not go unchecked."

The FTC's rule does not categorically prohibit the use of customer non-solicitation, anti-poaching, confidentiality, or non-disclosure provisions within employment agreements. However, these provisions will be evaluated on a case-by-case basis to determine whether they have the effect of preventing workers from obtaining a new job. Consultation with experienced legal counsel to ensure the enforceability of these alternative provisions is essential.

Despite the potential uncertainty as to implementation, employers should immediately conduct a review to identify all employees currently subject to noncompetes and the implications to their business in the event such agreements become voided and for purposes of providing notice.

If you have any questions about Tuesday's decision and how it could affect your business, please [contact me](#) or any member of our [Labor and Employment Group](#), which has worked with dozens of companies on noncompete agreements.

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