

NEWS & INSIGHTS

All is not lost: Protecting IP without noncompetes

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The Federal Trade Commission has been working on rules to limit anti-competitive activities in business. Draft rules, including a proposed ban on employee noncompete agreements (NCAs), were rolled out in January 2023. The FTC voted last week to [uphold the ban](#) as the proposed rules work their way to a final form. The rules, slated to go into effect on Aug. 22 ban virtually all noncompete agreements that employers impose on employees when they leave the employer.

Do not despair. Chicken Little is wrong and the sky is not falling. There are still effective legal measures with which you can protect your competitive advantages. As J. Paul Getty once told his lawyers, “Don’t tell me I can’t do what I

want to do. Tell me how I can do what I want to do.” Saxton & Stump can tell you how.

Companies often use noncompete agreements to limit the flow of company information, some of which is proprietary, to competitors by preventing former employees from taking positions with those competitors for a defined time period. NCAs are but one of several options companies can use to protect confidential information. The FTC ruling simply requires companies to find different ways to protect their business. The key is to focus on confidential information and trade secrets.

Every company needs policies and procedures to protect confidential information and trade secrets. Employees must be made aware of those procedures. The information must be identified and itemized. Access to the information must be limited to individuals who need to know, and every person with such access must sign a well-designed non-disclosure agreement. Non-solicitation agreements limit a former employee’s efforts to woo customers or other valuable employees.

By taking such steps, companies can prevent former employees from disclosing company secrets and damaging intellectual property interests by taking a job with a competitor.

While challenges to the ban are certain, they are likely to take significant time to play out. With company secrets at risk, information that represents valuable intellectual property assets, waiting in the hope that the ban might be reversed, is not advisable. A better approach is to act now to bolster intellectual property protection and be prepared when the ban takes effect.

If you have any questions about the FTC ruling, or want to hear about possibilities for protecting your intellectual property outside of noncompete agreements, [please contact me](#) or anyone in the [Saxton & Stump Intellectual Property Group](#).

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