Shumaker

APRIL 21, 2023 | PUBLICATION

Client Alert: Your Non-Compete Might Not Be Enforceable For Much Longer

INDUSTRY SECTOR

Financial Services

RELATED PROFESSIONALS

Justin P. Senior

MEDIA CONTACT

Wendy M. Byrne
wbyrne@shumaker.com

Download Client Alert: Your Non-Compete Might Not Be Enforceable For Much Longer

Whether you are an employer attempting to maintain and enforce non-compete provisions in contracts with your employees, or an employee trying to navigate career developments despite being subject to such a provision, you need to know that there is a strong possibility that those non-competition provisions could be unenforceable by the end of 2023.

You might have seen that on January 5, 2023, the Federal Trade Commission (FTC) issued a proposed new rule that would effectively end the use of non-compete clauses nationwide, with only a few exceptions (such as purchase agreements and franchise agreements). The proposed rule would essentially make it a potential violation for an employer:

- To maintain with a worker (whether an employee or an independent contractor) a non-compete clause;
- To enter into or attempt to enter into a non-compete clause with a worker; or
- In some specific scenarios, represent to a worker that he or she is subject to a non-compete clause.

Additionally, the proposed rule would also require employers who presently maintain non-compete clauses with their workers to rescind those clauses and provide notice to any such impacted workers that the non-compete clauses are no longer in effect.

The FTC typically allows 60 days for the public to submit comments for or against a proposed rule. In this case, that time period was extended to 104 total days and recently closed on April 19. Numerous politicians, big businesses, and special interest groups submitted comments on both sides of the proposed rule. Although there will surely be legal and procedural challenges to the proposed rule—as indicated in many of the nearly 26,000 comments—federal agencies like the FTC do not typically release proposed rules of this magnitude and effect without intending to implement them in some way. If the proposed rule goes through, whether as drafted or revised, compliance with the rule could possibly be required as early as December of this year.

Shumaker's experienced financial industry restrictive covenant attorneys have drafted, negotiated, revised, and analyzed contracts containing non-competes for thousands of employers and employees. Given the quick turnaround time for the FTC's new proposed rule, understanding your contracts, as well as your

relative rights and vulnerabilities, is critical. Contact Shumaker attorney Justin Senior for more information.

© 2026 Shumaker, Loop & Kendrick, LLP. All Rights Reserved. Privacy Policy/Disclaimer

Shumaker