

APRIL 29, 2024 | PUBLICATION

Client Alert: Federal Trade Commission Votes to Ban Non-Competes

RELATED ATTORNEYS

Ryan M. Guerin

MEDIA CONTACT

Wendy M. Byrne

wbyrne@shumaker.com

Download Client Alert: Federal Trade Commission Votes to Ban Non-Competes

On April 23, 2024, the Federal Trade Commission (FTC) voted—and approved—a final rule to ban almost all non-competition agreements in the country.

The final rule generally tracks the FTC’s previously proposed rule from January 2023 and has several key components. Specifically, the new rule would ban all new post-employment non-compete agreements, regardless of industry or type of worker. Employers would also be required to notify those workers with existing non-compete agreements that they are no longer enforceable. Importantly, however, the new rule does not restrict employers from entering into agreements which would bar workers from engaging in competitive activity during their employment or enforcing non-competition clauses associated with the sale of a business. The FTC also stops short of banning other restrictive covenants, including non-solicitation provisions.

Likewise, the FTC’s ban would also not extend to all workers. Specifically, those carved out from this rule include “senior executives,” which have been generally defined by the FTC as employees “earning more than \$151,164 annually who are in a policy-making position,” franchisors and franchisees, and nonprofit organizations, among others.

This final rule will become effective 120 days after its publication in the Federal Register. However, several entities have already vowed to challenge the rule in court, which could very well affect if, when, and in what form the rule is ultimately enforced. Because of the strong possibility of litigation, businesses should stay tuned to see how the courts will ultimately decide on the fate of the FTC’s rule.

If you have any questions about this new rule and how it may impact your business, please contact us.