



## Understanding the FTC's Ban on Non-Compete Clauses: What You Need to Know

In a monumental move impacting employment practices across the nation, the Federal Trade Commission ("FTC") announced on April 23, 2024, its final Rule banning most non-compete agreements between employers and employees nationwide (the "Rule"). This Rule, which goes into effect in late August 2024, carries profound implications for the American workforce.

### Understanding Non-Compete Clauses

A non-compete clause is a contractual provision that prohibits employees from engaging in certain activities competitive with their current companies and after leaving their employment. These activities typically include seeking employment with a competitor or starting a competing business. The Rule targets these restrictive covenants, aiming to safeguard workers' mobility and promote fair competition in the labor market.

### Key Provisions of the Rule

The FTC's Rule outlines specific provisions regarding non-compete clauses:

**Prohibition for Most Workers:** For all workers except "senior executives," employers are barred from entering into, enforcing, or representing the existence of non-compete clauses, regardless of whether the clause was entered into prior to the effective date of the Rule. The definition of "worker" is expansive and includes independent contractors, interns, and volunteers.

**Definition of Senior Executive:** The Rule defines a "senior executive" as a high-level worker with policy-making authority who was paid at least \$151,164 in the preceding year or will be paid

\$151,164 when annualized in the current year.

A "policy-making position" refers to individuals, such as a manager, director, or officer with the authority to make policy decisions for the employer.

Only non-compete agreements entered into before the Rule's effective date will remain valid and enforceable against senior executives.



**Effective Date and Enforcement:** The Rule is slated to take effect 120 days after its publication in the Federal Register. Such publication will likely occur in late April 2024, in which case the Rule becomes effective in late August 2024. After this date, non-compete provisions applicable to most workers will become unenforceable.

### Exceptions and Nuances

While the Rule imposes broad restrictions on non-compete clauses, several exceptions and nuances apply:

- **Business Sale and Ownership Interests:** Non-compete clauses entered into as part

of bona fide business sales or transfers of ownership interests are permissible.

- **Pre-Existing Causes of Action:** Actions relating to non-compete violations occurring before the Rule's effective date remain unaffected.
- **Confidentiality and Non-Solicitation Provisions:** While not stated in the Rule, the FTC has clarified that confidentiality and non-solicitation provisions are generally permissible, provided they do not function as de facto non-compete clauses.

themselves with the Rule's provisions and prepare for its implications. Adhering to legal requirements and staying informed about potential changes will be essential for navigating this new employment law landscape. Individuals are encouraged to consult their attorney or any member of our Business Law Group at Carlile Patchen & Murphy LLP for further clarification or assistance.

## Employer Obligations

Under the Rule, employers must notify workers subject to existing non-compete provisions that these provisions will soon be unenforceable. This notice must be delivered by hand-delivery, mail, email, or text message, but cannot be communicated verbally. The Rule, which can be found on the FTC's website, contains sample safe harbor language that may be used for such notices.

## Potential Challenges and Future Outlook

The FTC's Rule is anticipated to face legal challenges, which could delay its enforcement or render it unenforceable altogether. Employers should stay informed about developments in this area of law and seek guidance from legal professionals to ensure compliance with evolving regulations. For now, the Rule is final and becomes effective in late August 2024.

The FTC's ban on most non-compete agreements represents a significant step toward enhancing worker mobility and fostering a more competitive labor market. As the effective date approaches, employers and employees alike must familiarize