

EMPLOYER LAW BLOG

EMPLOYER ALERT: FTC Votes to Broadly Ban Non-Competes

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On April 23, 2024, the Federal Trade Commission (FTC) voted to broadly ban the use of nearly all non-compete agreements, with certain limited exceptions. The rule is set to take effect in 120 days.

The final rule comes after a nearly 600-page draft rule had been published as part of the public review and comment process. Several features of the final rule are worth noting.

First, existing non-competes for “senior executives” can remain in effect, but employers may not enter into any such agreements going forward. The FTC defines “senior executives” as individuals who earn more than \$151,164 annually and has policy-making authority.

Second, employers must provide notice to employees subject to non-competes that their agreements will not be enforced against them going forward. The FTC has published model language for employers to use in this regard.

According to the FTC, the “final rule will generate over 8,500 new businesses each year, raise worker wages, lower health care costs, and boost innovation.” Critics of the final rule—and there are many—vehemently dispute these contentions.

We expect to see legal challenges to the rule before it goes into effect. In particular, we expect to see challenges to the FTC’s authority to even engage in such broad-sweeping rulemaking. Only time will tell whether those challenges will have success.

In the meantime, all employers using non-competes should reach out to legal counsel to discuss how this final rule will impact their workforces and what might be done between now to protect their business going forward. Don’t hesitate to reach out to a member of our Labor & Employment Team here at Sandberg Phoenix.