

Federal Trade Commission (FTC) Finalizes Ruling on Noncompete Clauses

Overview

On April 23, 2024, the Federal Trade Commission (FTC) issued a final rule banning noncompete agreements nationwide. The ultimate goal is to stimulate a competitive job market while protecting the “fundamental freedom of workers to change jobs, increasing innovation, and fostering new business formation”. The final rule is expected to result in higher earnings for workers, lower health care costs, and help to drive innovation. The final rule is slated to take effect 120 days after its publication in the Federal Register.

The FTC found that noncompetes negatively affect business:

- Competitive conditions in labor markets by restraining efficient matching between workers and employers
- Competitive conditions in product and service markets, inhibiting new business formation and innovation
- There is also evidence that noncompetes lead to increased market concentration and higher prices for consumers

Key Takeaways

1. Bans any noncompete clauses between employers and workers.
 - a. Existing noncompetes will be rescinded and not enforceable.
 - b. No new noncompete agreements can be established.
2. Existing employer noncompete clauses with workers, other than those qualifying as “senior executives”, are no longer effective or enforceable.
 - a. The final rule defines senior executives as workers earning more than \$151,164 annually and who are in policy-making positions.
 - b. The final rule does not invalidate existing noncompete clauses with senior executives — but does prohibit them on a going forward basis.
3. Employers must provide notice to employees that the existing noncompete clauses will not be enforced.
 - a. The FTC included [example notices](#) that can be used for employee notification
4. Exceptions for worker noncompete clauses entered in as part of a bona fide “sale of business,” as well as for existing causes of action under worker noncompetes that accrued prior to the issuance of the final rule.
5. The final rule is effective 120 days after its publication in the Federal Register.

Potential Alternatives to Noncompete Agreements

- Nondisclosure agreements
- Non-solicitation agreements
- Use of contingent or accrued bonuses that require repayment or loss of sick days if an employee ends their employment before a certain period of time