



FEDERAL TRADE COMMISSION BANS MOST NONCOMPETE CLAUSES

On April 23, 2024, the Federal Trade Commission (“FTC”) voted 3-2 to adopt a Final Rule banning nearly all noncompete clauses. Noncompete clauses are used by employers to prohibit workers from switching jobs within an industry, and they often restrict workers’ rights and mobility even after they have been laid off or terminated. The FTC’s move follows an executive order by President Biden urging limitations on these agreements. FTC Chair Lina Khan emphasized the importance of protecting economic freedom and dismissed arguments that the FTC lacks rulemaking authority.

The rule prohibits any new noncompete agreements, except for franchisees and employees of nonprofits. When the rule takes effect, existing noncompete clauses will also become void, though an exception was made to allow such existing agreements to stand if the employee is an executive in a “policy making position” who earns over \$151,164 annually. The FTC estimates that the ban will positively impact the U.S. economy and could increase U.S. earnings by \$400 billion over the next decade.

While various labor unions and Democratic senators have voiced their support for the ban, it is already facing intense backlash from business groups. Opponents have cited concerns regarding an employer’s ability to protect confidential information, and the U.S. Chamber of Commerce plans to challenge the rule in court as soon as possible. The Chamber argues that the ban oversteps the FTC’s rulemaking authority, while the FTC maintains that, under Section 18 of the FTC Act, it has the power to issue rules defining unfair methods of competition.

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