

FTC Non-Compete Rule FAQ's

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What is the FTC Rule “banning” non-competes?

In April 2024 the Federal Trade Commission issued its final rule that bans non-competes (subject to certain exceptions).

How does the FTC define “non-compete” agreements?

A term or condition of employment that prohibits a worker from, penalizes a worker for, or functions to prevent a worker from:

- (i) seeking or accepting work in the United States with a different person where such work would begin after the conclusion of the employment that includes the term or condition; or
- (ii) operating a business in the United States after the conclusion of the employment that includes the term or condition.

This looks to what a contract term/clause does, not what it is called.

What changed and when will the ban on non-competes go into effect?

The FTC Rule would apply nationally and control over state laws if the FTC Rule is upheld in litigation.

Who is classified as a “Worker” under the FTC Rule?

“Worker” means any natural person who works or previously worked, whether paid or unpaid, without regard to the worker’s status under any State or Federal Laws. Notably, Worker includes both employees and independent contractors.



Does the FTC rule impact non-solicitation clauses?

Maybe depending on what the clauses restrict. The test for a non-compete depends on what a term or condition does, not what it is called.



Are there exceptions to the FTC ban on non-competes?

Yes, for pre-existing causes of action, a sale of a business and where there is a good faith basis that the FTC rule does not apply.

What are the potential implications of the FTC ban on non-competes for employers and employees?

The ban (if upheld) will result in increased job mobility and competition. Employers will need to pursue alternative measures to protect their businesses including by better protecting their intellectual property.

How should employers prepare for the transition away from non-compete agreements?

By reviewing existing agreements and compiling lists of who is bound by non-competes for notification purposes.



Mike Schauer
Partner

216.696.4200 x1133
mschauer@sssb-law.com



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