

Legal Update | FTC Non-Compete Rule

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On May 7, 2024, the U.S. Federal Trade Commission (FTC) published a final rule banning non-competes. The FTC determined non-competes are an unfair method of competition and, therefore, are a violation of the FTC Act. The rule will go into effect 120 days after publication, on September 4, 2024. The rule is extremely broad, as it will ban non-competes and any terms or conditions of employment that would prohibit, prevent or penalize a worker from either seeking work with a different employer or starting a business following employment. Not only does the rule prevent employers from entering into new non-competes as of September 4, 2024, it also requires employers to notify employees with existing non-compete agreements that they are now unenforceable.

There are two categories of non-competes that are exceptions to the rule:

1. It does not nullify existing non-competes with senior executives. However, it does ban new non-competes with senior executives after the effective date. A senior executive is a worker earning more than \$151,164 in a policy-making position.
2. Non-competes are allowed in agreements for the sale of a business, including the sale of a single person's ownership interest in a business.

Further, there are some employers who are not subject to the rule, due to the employers being exempt from the FTC's jurisdiction under the FTC Act. These employers generally include financial institutions (banks and credit unions), some non-profit organizations and certain common carriers.

In sum, most non-competes will be unenforceable as of September 4, 2024. This rule will supersede all contrary state laws. However, this rule and the FTC's power to promulgate it have been challenged in numerous jurisdictions. In particular, there is pending litigation seeking a preliminary injunction and to stay the non-compete ban. MGC will continue to provide updates as to whether those challenges are successful and how the FTC responds.

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