

Biden Executive Order Signals Future Restrictions on Non-Compete Agreements

Article By:

Robert J. Hingula

Scott M. Gilbert

Ross T. Weimer

On July 9, 2021, President Biden made good on a campaign promise to address non-compete agreements by issuing a sweeping executive order that specifically targets barriers to competition. Specifically, the executive order encourages the Federal Trade Commission and other federal agencies to ban or limit non-compete agreements. However, no specifics are offered as to the breadth of any restrictions the Biden Administration would ultimately like to see. And even assuming those agencies respond to this encouragement, we expect the rulemaking process will not yield actionable results for a considerable period of time and is unlikely to result in a complete ban on the use of non-competes.

In a press conference, the President stated that the executive order is in response to the growing number of employers utilizing non-competes in recent years – estimating that between 35 million and 60 million private-sector individuals are subject to non-competition agreements. The Biden Administration believes limiting or banning the use of non-competition agreements will increase economic growth and increase wages to allow workers mobility to switch to better-paying jobs. The executive order could prove to be an accelerant for states to initiate their own legislation limiting the use of non-competes – a recent state-law trend that has been gaining traction across the country, in which we have been closely monitoring over the last few years.

Regardless of how broadly the executive order is written or when federal agencies ultimately issue new rules, the writing on the wall for years has indicated that the broad use of traditional non-compete agreements will continue to be limited. Employers would be wise to revisit the protections they have in place to protect trade secret and confidential information and their investments in employee training to ensure such protections are narrowly tailored to obtain court enforcement if challenged. One solution has been to move away from traditional non-compete agreements toward customer-based restrictions for the majority of employees.

Source URL: <https://natlawreview.com/article/biden-executive-order-signals-future-restrictions-non-compete-agreements>