

Future of Non-Competes Up in the Air

Article By:

Paul M. Huston

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The FTC recently announced its proposal to ban non-compete clauses in employment agreements. That proposal is currently in a 60-day period of public comment, and employers are (understandably) nervous. While many employers rely on these provisions to manage competition and protect their IP and confidential information, companies across the country may soon find themselves in the shoes of California employers, having to work around restrictions on non-competes to maximize protection within the increasingly narrow confines of the law.

Employers are not without options in responding to the potential changes should they become law--more aggressive retention incentives, intelligent data security, and stricter confidentiality agreements should all be part of the conversation. Even deferred compensation could be on the table, as noted in the article, though beware of the tax implications. Employers should also keep in mind that the FTC proposal, should it become law, will doubtless be subject to legal challenges and could be tied up in the courts for a while before becoming effective.

"[Observers on both sides](#) say that limitations on the clauses will compel employers to get more creative about how they retain talent, using everything from compensation to career advancement to keep workers engaged and loyal to the company. Some companies use deferred compensation—such as retention bonuses or rolling stock options that vest after, say, three years—to give people incentives to stay."

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