

New FTC Rule Bans Most Non-Compete Agreements

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Chamber of Commerce Announces Plan to Sue to Block Rule

In a major development, the Federal Trade Commission (FTC) voted today, April 23, 2024, to implement a new rule that will ban non-compete agreements for most American workers. This rule, set to take effect 120 days from the date it is published in the Federal Register, could impact as many as 30 million U.S. workers — both employees and independent contractors — who are subject to non-compete restrictions. The rule requires that businesses rescind most existing non-compete agreements and restrictions on workers, and it prohibits businesses from entering into non-compete agreements with workers in the future.

The U.S. Chamber of Commerce has already announced plans to sue the FTC over this new rule. Litigation to block the rule could be filed as soon as Wednesday, April 24.

Key features of the rule are as follows:

- Businesses will no longer be able to enter into or attempt to enter into non-compete agreements or clauses, to maintain existing non-compete agreements or clauses, or to represent to a worker that the worker is subject to a non-compete agreement, subject to a few very limited exceptions.
- Workers covered by the rule include employees, independent contractors, interns, volunteers, apprentices, and sole proprietors, whether the person presently works for or previously worked for the business.
- Non-disclosure/confidentiality agreements and non-solicitation agreements may be permissible, unless they are so broad in scope that they essentially function as a non-compete agreement.
- For those workers with existing non-compete agreements that are no longer valid under the

new rule, businesses must notify them that the non-compete provision has been rescinded. Notices must be delivered in writing via letter, email, or text message, no later than the rule's effective date. The FTC rule provides a model notice that can be used for this purpose.

- Existing non-compete agreements with “senior executives” remain in effect and will be enforceable to the extent they are currently enforceable under applicable state law. The term “senior executive” is defined to mean persons who are in policy-making positions (such as president, CEO, or similar officer) and have total annual compensation of at least \$151,164 per year. Businesses may not enter into new non-compete agreements with existing or future “senior executives,” regardless of whether they make policy decisions or how much they are paid.
- The ban on non-compete agreements does not apply to a non-compete that is entered into by a person pursuant to the bona fide sale of a business entity or such person's ownership interest in a business entity, regardless of the percentage interest of such person in the business entity. However, this exception does not apply to the sale of a sole proprietorship or assets of a business that has not been incorporated.

The new rule is scheduled to take effect within 120 days of its publication in the Federal Register.

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