

The FTC's Final Rule Banning Non-Compete Agreements Takes Effect on September 4, 2024: What It Means for Employers

Article By:

Nathaniel Dudley

In a landmark decision, the Federal Trade Commission (FTC) has finalized a rule banning all non-compete agreements for all employees, with some limited exceptions. This rule seeks to foster fair competition and enhance worker mobility by prohibiting employers from restricting employees' ability to work for competitors or start their own businesses after leaving a job. Though the rule is set to take effect on September 4, 2024, it faces anticipated legal challenges that could delay its implementation.

The Final Rule bans all true non-compete clauses, which have traditionally been a tool for employers to safeguard their business interests by limiting employees from joining or starting competing businesses.

- Prohibits an employer from entering, or attempting to enter, a non-compete clause with a worker or representing that a worker is subject to a non-compete clause.
- Allows employers to maintain existing non-compete agreements with senior executives—those with over \$151,164 annual compensation and in a policy making position—but bars an employer from entering, or attempting to enter, a non-compete clause with a senior executive after the effective date of the Final Rule.
- Invalidates existing non-compete clauses.
- Does not apply non-compete clauses in connection with the bona fide sale of a business entity, or of the person's ownership interest in an entity, or a substantial amount of a business entity's operating assets.
- Includes a notice requirement for workers who entered a non-compete clause that the provisions are unenforceable and must identify the person who entered the non-compete. The notice must be in writing, and delivered by mail, by email, or by text message.

Impact on Employers

The FTC's rule will significantly impact how businesses operate and manage their workforce. Employers will need to adapt and review their employment contracts to remove non-compete clauses. This process will also involve updating internal procedures to ensure compliance with the new rule. Employers can take alternative measures, including:

- Non-Disclosure Agreements: To safeguard trade secrets and proprietary information.
- Non-Solicitation Agreements: To prevent former employees from poaching clients.
- Confidentiality Agreements: To ensure sensitive business information remains protected.

Texas Court Order

The United States District Court for the Northern District of Texas granted the motions for a preliminary injunction to prevent the FTC's rule from being placed into effect, however, it is unclear whether the rule will be enjoined completely or strictly stayed only with respect to the plaintiffs that are in the litigation. The order currently only applies to the named Plaintiff's in the case. The Texas Court found that the Plaintiffs had demonstrated that the FTC does not have the power to regulate competition rulemaking, that the rule is arbitrary and capricious, and the plaintiffs and intervenors had satisfied their burden to prove that they suffered irreparable harm, satisfying the standard for injunctive relief. The court has indicated that it will issue a final order on the merits by August 30, 2024. It is possible that the court may enjoin the non-compete ban across the nation.

The FTC's Final Rule banning non-compete agreements represents a major shift in employment regulation. Employers will need to adapt accordingly but should closely monitor the situation, as delays and legal challenges are present and anticipated before the effective date of September 4th.

©2025 CMBG3 Law, LLC. All rights reserved.

National Law Review, Volume XIV, Number 232

Source URL: <https://natlawreview.com/article/ftcs-final-rule-banning-non-compete-agreements-takes-effect-september-4-2024-what>