



BUSINESS UPDATE

SUMMARY OF FTC'S RULE BANNING NON-COMPETE CLAUSES

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Overview of FTC's Rule Banning Non-Compete Clauses



The Federal Trade Commission (FTC) has enacted a final rule that prohibits employers across the United States from using non-compete clauses. This decision aims to enhance market competition by empowering workers to move between jobs without restriction. The rule is expected to foster innovation and improve working conditions by eliminating barriers that prevent workers from seeking better opportunities or starting new businesses.

Understanding the FTC's Ban on Non-compete Clauses

Introduction to Non-compete Clauses

Non-compete clauses are contractual agreements that restrict a worker's ability to work in the same industry or start a similar business after leaving a company. According to the FTC, these clauses have been justified by employers as necessary to protect proprietary information and maintain a competitive edge.

The FTC's Rationale for the Ban

The FTC states that its decision to ban non-compete clauses stems from extensive research indicating that these clauses stifle competition, suppress wages, and limit worker mobility. According to the FTC, non-compete

agreements not only restrict former employees but also indirectly affect other workers by maintaining general wage suppression across industries.

Banning noncompetes:
Good for workers, businesses, and the economy

The FTC estimates that banning noncompetes will mean

- ▶ **More innovation:** an average of 17,000-29,000 more patents each year
- ▶ **More startups:** a 2.7% increase in new firm formation - that's 8,500+ new businesses per year
- ▶ **Higher earnings:** typical workers earn \$524 more per year

Who's affected?
An estimated **18%** of U.S. workers are covered by noncompetes.

That's 30 million people.

FEDERAL TRADE COMMISSION

Economic Impacts of the Ban

The FTC estimates that banning non-compete agreements could boost workers' earnings by up to \$296 billion annually. By allowing for greater mobility in the workforce, the rule is expected to open up about 30 million jobs that were previously locked under non-compete constraints, offering workers the freedom to advance their careers or start new ventures without

fear of legal repercussions.

Specific Provisions of the Rule

Under the new FTC rule, employers are prohibited from:

- Entering into non-compete agreements with any of their workers, paid or unpaid.
- Maintaining existing non-compete agreements.
- Suggesting or implying to workers that they are bound by non-compete clauses.
- This rule applies to all kinds of workers, including independent contractors and unpaid interns. Employers are required to rescind

existing non-competes and must clearly communicate to workers that these agreements are no longer enforceable.

Exceptions and Limitations

SENIOR EXECUTIVES

Existing non-compete agreements involving senior executives (less than 0.75% of the workforce) can remain in force even after the rule's effective date. However, employers are prohibited from entering into new non-compete agreements with any workers, including senior executives, or attempting to enforce any new non-competes.

Furthermore, employers are required to notify workers other than senior executives that non-compete agreements will not be enforced following the rule's implementation. This means that for the vast majority of workers, any existing non-compete clauses will effectively become unenforceable once the rule takes effect.

OTHER RESTRICTIVE COVENANTS

The rule does not extend to other forms of employment restrictions, such as non-disclosure agreements (NDAs), which are still permissible as long as they do not serve the same restrictive purpose as non-compete clauses. The FTC emphasizes that any agreement that functions similarly to a non-compete under the guise of a different type of contract may still be subject to the new rule.

Conclusion

The FTC's ruling on non-competes marks a significant shift in employment law and labor market dynamics. It reflects a broader effort by regulatory bodies to promote fair competition and worker rights. By removing these legal barriers, the FTC aims to foster a more dynamic and innovative economic landscape where individuals are free to pursue the best opportunities available to them.

For more detailed information on the FTC's rule and its implications, you can visit the FTC's official press release and related documents [here](#).

FAQs

1. When is the effective date?

The Rule takes effect 120 days after it is published in the Federal Register, likely in early September. FTC will update this guide with the exact date once it is available.

2. Which workers are covered by the Rule?

The Rule applies to non-competes with all workers, whether full-time or part-time, including employees, independent contractors, interns, externs, volunteers, apprentices, and others.

3. Which businesses are covered by the Rule?

The Rule covers all types of businesses in nearly all industries. Some employers are outside the FTC's jurisdiction and therefore not subject to the Rule. This includes banks, savings and loan institutions, federal credit unions, common carriers, air carriers, and certain non-profits.

4. Is there something different about how non-competes with senior executives are treated under the Rule?

Yes. After the effective date, you can't enter into a new non-compete with any worker covered by the Rule—that includes senior executives. However, an existing non-compete with a senior executive is still valid. In contrast, for workers other than senior executives, you cannot enforce existing non-competes after the effective date and you must give these workers notice that their non-competes will not be enforced.

5. How is senior executive defined?

A worker is a senior executive if they earn more than \$151,164 in compensation a year and are in a “policy-making position.” Compensation can include salary, commissions, performance bonuses, and any other compensation agreed to that the worker knows and can expect, but does not include items like benefits or board and lodging. If the worker worked only for part of the year, you can annualize their earned compensation to see if they meet the threshold. Policy-making position includes the president, CEO, or someone else with authority to make policy decisions for the entire company.

6. Can I hire a worker who had a non-compete in their prior job?

Yes, if the prior non-compete is covered by the Rule. Unless the worker was a senior executive, the prior non-compete is no longer enforceable after the Rule's effective date.

7. Does the Rule apply to non-competes between businesses?

The Rule only applies to non-competes between businesses and workers. For example, the Rule does not apply to non-competes in franchisor/franchisee contracts, but it does apply to

non-competes between employers and workers at franchises. However, those other non-competes, including between businesses, would still be subject to other antitrust laws.

8. What if I'm selling my business?

The Rule doesn't apply to non-competes between a buyer and seller of a business (or potentially the seller's share of a business). The seller can agree to a non-compete individually, but not for any of the business's workers. The Rule prohibits non-competes for workers, including in a sale of business context.