

Groundbreaking Decision

New FTC Rule Bans Non-Compete Agreements

THE FEDERAL Trade Commission on April 23 approved a new rule that bans employers from requiring new employees to sign non-compete agreements. The rule will take effect in August 2024, after the commission voted 3-2 to approve it.

Besides banning future non-compete agreements, the new rule also nullifies all existing non-competes and requires employers to inform current and past employees that they will not be enforced.

Obviously, employers will need to scramble to comply with the new rule as the ramping up period is relatively short. However, it should be noted that the day after the regulations were announced, the U.S. Chamber of Commerce and other business groups filed lawsuits to block the rule from taking effect.

This new federal rule comes after four states — California, Minnesota, North Dakota and Oklahoma — banned non-competes and 13 others have laws limiting their use.

Under the FTC's new rule, existing non-compete agreements for the vast majority of workers will no longer be enforceable after its effective date.

Existing agreements for senior executives — who represent less than 0.75% of workers — can remain in force under the final rule. The rule defines senior executives as workers earning more than \$151,164 annually and who are in policy-making positions.

That said, employers are banned from entering into or attempting to enforce any new non-competes, even if they involve senior executives.

Employers will be required to provide notice to workers other than senior executives who are bound by existing non-competes that they will not be enforcing the agreements.

The next step

Since the rule has already been challenged in court, a judge may put a stay on it while litigation proceeds, but employers can't count on that.

Time is quite short to prepare for the new rule. If you have any current non-competes, or if you require new employees to sign one, you should consult with your legal counsel to discuss your procedures going forward and the steps you'll have to take to comply with the new rule.

To help employers adhere to the requirement that they inform current and former employees that their non-compete agreements are null and void, the FTC has included model language in the final rule.

The commission said that employers have several alternatives to non-compete agreements that still enable firms to protect their investments without having to enforce a non-compete.

Trade secret laws and non-disclosure agreements both provide employers with well-established means to protect proprietary and other sensitive information. Researchers estimate that over 95% of workers with a non-compete already have an NDA. ❖

