



No More Non-Competes

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The U.S. Federal Trade Commission has upended one of the most common aspects of executive employment, banning non-compete agreements as, in the words of the announcement, ‘an unfair method of competition.’ The ban covers everyone except senior executives who are in a ‘policy-making position,’ for whom existing noncompete will be grandfathered.

The final Rule defines a “non-compete clause” as “a term or condition of employment that prohibits a worker from, penalizes a worker for, or functions to prevent a worker from (1) seeking or accepting work in the United States with a different person where such work would begin after the conclusion of the employment that includes the term or condition; or (2) operating a business in the United States after the conclusion of the employment that includes the term or condition.”

The Rule applies broadly to all employees, independent contractors, externs, interns, volunteers, apprentices, or sole proprietors who provide a service. However, non-disclosure agreements and non-solicitation agreements that would not prevent a worker from taking a new job or starting a new business are still considered legally valid, subject to state laws. If the noncompete ban holds up in court, then it will take effect later this year, and the FTC expects that 30 million people—one in five American workers—will be affected. The impact could lead to more people moving to new jobs more freely than they could when noncompete were enforceable. The FTC suggests that the ruling will lead to a 2.7% increase in the rate of new small business creation, resulting in an additional 8,500 new businesses created each year.

But there will definitely be a court challenge. The U.S. Chamber of Commerce, a trade organization for Corporate America, has lobbied furiously against the proposal and has promised to take the matter to litigation.

Sources:

<https://www.npr.org/2024/04/23/1246655366/ftc-bans-noncompete-agreements-lina-khan>

<https://www.ftc.gov/legal-library/browse/rules/noncompete-rule>

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