

## FTC Proposes Ban on Non-Compete Agreements

### What You Need to Know

- The FTC has proposed a new rule which, if adopted in its current form, would prohibit nearly all private employers from entering into or enforcing non-compete agreements with their employees.
- The proposed rule would supersede any state laws related to non-compete agreements that are inconsistent with the provisions of the rule if the protection those state laws afford workers is less than the protection provided under the rule.
- The proposed rule would impact non-compete agreements currently in effect as well as those that would become effective at a later date.
- Employers should proactively consider the potential ramifications of this broad-based rulemaking on their business interests.

On January 5, the Federal Trade Commission (FTC) issued an extremely broad [Notice of Proposed Rulemaking](#) which would prohibit the use of non-compete agreements in most cases. The issuance of the Notice was not surprising, as in July 2021 President Biden issued an Executive Order directing the FTC to curtail the use of non-competes and other provisions that may restrict worker mobility. However, the breadth of the Notice is greater than what most practitioners expected.

The FTC Notice is subject to a 120-day comment period and will then become effective 60 days after it is issued in final form. We expect there to be numerous comments and legal challenges to the Notice, and any rule that is issued by the FTC in final form may differ in many respects from what is contained in the Notice issued last week. Nonetheless, it is important for employers to be aware of the proposed rule and consider how it may impact their business, including any action employers may need to take upon the FTC's adoption of the rule in final form.

The following is not intended to be a comprehensive discussion of the 218-page Notice of Proposed Rulemaking, but instead provides an overview of certain provisions which employers should have on their radar at this stage:

### Next Steps for Employers

As previously indicated, we expect a host of comments and legal challenges to the proposed rule. Issues that will undoubtedly be raised include whether the restrictions on competition should apply to senior executives and whether there should be different rules based on the level of the worker's compensation.


At this point in time, employers should review which of their employees are subject to non-compete agreements and other restrictive covenants and consider the potential impacts of the proposed rule if adopted in its current form, including the protection of proprietary business information.

Employers may also wish to note that the FTC is accepting public comments to the proposed rule [online](#) through March 10, 2023, after which time the rule will be finalized and announced.

Members of the firm's [Employment Law](#) Department are continuing to study and monitor the FTC's Notice of Proposed Rulemaking as well as related pending legislation in New Jersey. We encourage you to reach out with questions concerning the proposed rules and how they may impact you or your business.

### Related Attorneys

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**Thomas C. Senter**  
Partner  
732.476.2650  
Email