

**Alert | Labor & Employment/
Antitrust Litigation & Competition Regulation**



April 2024

FTC Votes to Ban Noncompete Clauses Nationwide

Go-To Guide:

- The FTC's vote has no immediate effect. Existing restrictive covenants and noncompete clauses remain enforceable, and new noncompete agreements may be executed.
- If the final rule takes effect (presently 120 days after publication in the Federal Register), legal challenges to the final rule will almost certainly result in significant delays to its implementation.
- The final rule bans all noncompete clauses with all workers. It makes no exception for high-earning individuals or executives on a go-forward basis.
- The final rule defines "noncompete clause" broadly to include a term of employment that functions to prevent a worker from seeking or accepting work in the United States after the employment concludes. It does not apply to restrictions during employment.
- The final rule invalidates existing noncompete clauses except those with "senior executives" and requires employers to provide notice that existing noncompete clauses are no longer enforceable.
- The final rule expressly exempts noncompete clauses entered into with sellers in the context of a bona fide sale of business entity.
- The final rule does not outright ban non-solicitation or confidentiality provisions, but the definition of noncompete agreements may include non-solicitation/confidentiality provisions that function as de facto noncompetes.

BACKGROUND

On April 23, 2024, the Federal Trade Commission (FTC) voted 3-2 in favor of banning noncompete clauses. The FTC first proposed the Noncompete Clause Rule on Jan. 19, 2023, under sections 5 and 6(g) of the FTC Act. GT previously [covered](#) the FTC's request for comments.

The [final rule](#) states that it is an unfair method of competition, and therefore violates section 5 of the FTC Act, for employers to enter into noncompete clauses with any workers after the final rule's effective date. The final rule bans noncompete clauses with workers after the effective date, which is 120 days after publication in the Federal Register.

THE FINAL RULE

What just happened?

On April 23, 2024, the FTC [issued](#) a final rule banning noncompetes nationwide. The rule takes effect 120 days after publication in the Federal Register, which is expected soon.

The FTC asserts the rule supersedes all contrary state laws.

What is the practical effect today?

The final rule has not yet taken effect and will not take effect for at least 120 days. There is little need to rush, particularly since industry groups have already announced an intent to challenge the validity of the rule in court.

What are the final rule's key features?

The final rule is very broad and practically serves as a ban on new employment noncompetes after the effective date.

First, the final rule prohibits employers from entering into noncompete clauses with any worker. The final rule's definition of "worker" includes all employees, independent contractors, volunteers, and interns. In short, the rule prohibits entering into new noncompete agreements with any worker after the effective date, regardless of position, pay, or title. The final rule makes no go-forward exception for noncompete agreements with senior executives or C-Suite employees.

Second, the final rule defines "noncompete" clause broadly. It includes any term or condition that prohibits or functions to prevent a worker from seeking employment after the end of their employment. It thus bans both traditional noncompete agreements and potentially broad non-solicitation or non-disclosure clauses that "function" as a noncompete agreement.

Third, the final rule requires employers to inform workers that existing noncompetes are no longer enforceable. Although most existing noncompetes are unenforceable, the final rule permits existing noncompetes with senior executives to remain effective. The term "senior executive" refers to workers earning more than \$151,164 annually who are in a "policy-making position."

Finally, the final rule supersedes any state laws permitting enforcement of noncompete agreements. It does not limit enforcement of a state law that restricts noncompetes if the state law does not conflict with the final rule.

To whom does the rule apply?

The final rule applies to most employers and all workers, including senior executives and independent contractors.

How does the final rule affect noncompete clauses in the context of business sales?

The final rule includes a sale-of-a-business exception and does not ban noncompete clauses made pursuant to a bona fide sale of a business entity. The rule defines a bona fide sale of a business entity as one made in good faith between two independent parties.

What is not covered by the rule?

The final rule does not prohibit noncompete clauses that apply during employment. Nor does it prohibit appropriately tailored non-solicit clauses or appropriately tailored clauses related to protection of confidential and trade secret information.

Is the final rule being challenged?

Yes, several organizations have already announced plans to **challenge the final rule**. Indeed, the U.S. Chamber of Commerce on April 24 “sue[d] the FTC to block this unnecessary and unlawful rule”

What do employers need to do now?

Employers should continue to follow the anticipated litigation challenging the final rule to keep track of the potential timing and likelihood of enforceability of the final rule. In the meantime, employers should (1) examine existing agreements with employees to ensure robust protections not prohibited by the final rule remain in place; and (2) prepare a communication plan to impacted workers informing them they are no longer bound by any covered non-compete provisions in the event the final rule takes effect.

Authors

This GT Alert was prepared by:

- **Gregory S. Bombard** | +1 617.310.6027 | Gregory.Bombard@gtlaw.com
- **Justin K. Victor** | +1 678.553.2169 | victorj@gtlaw.com
- **Emily Willis Collins** | +1 512.320.7274 | Emily.Collins@gtlaw.com
- **Jacob R. Dean** | +1 678.553.2161 | deanj@gtlaw.com

Albany. Amsterdam. Atlanta. Austin. Berlin.⁷ Boston. Charlotte. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Houston. Kingdom of Saudi Arabia.⁸ Las Vegas. London.⁹ Long Island. Los Angeles. Mexico City.¹⁰ Miami. Milan.¹¹ Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Sacramento. Salt Lake City. San Diego. San Francisco. Seoul.¹² Shanghai. Silicon Valley. Singapore.¹³ Tallahassee. Tampa. Tel Aviv.¹⁴ Tokyo.¹⁵ United Arab Emirates.¹⁶ Warsaw.¹⁷ Washington, D.C.. West Palm Beach. Westchester County.

This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ¹⁸Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg

*Traurig, P.A. and Greenberg Traurig, LLP. *Operates as a separate UK registered legal entity. «Greenberg Traurig operates in the Kingdom of Saudi Arabia through Greenberg Traurig Khalid Al-Thebity Law Firm, a professional limited liability company, licensed to practice law by the Ministry of Justice. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ¯Greenberg Traurig's Singapore office is operated by Greenberg Traurig Singapore LLP which is licensed as a foreign law practice in Singapore. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ¨Greenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimubengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ‹Greenberg Traurig's United Arab Emirates office is operated by Greenberg Traurig Limited. ~Greenberg Traurig's Warsaw office is operated by GREENBERG TRAUIG Nowakowska-Zimoch Wysokiński sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in GREENBERG TRAUIG Nowakowska-Zimoch Wysokiński sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2024 Greenberg Traurig, LLP. All rights reserved.*