

Legal Update

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FTC Announces Proposed Rule Banning Noncompete Agreements



On Jan. 5, 2023, the Federal Trade Commission (FTC) announced a proposed rule that would prohibit employers from imposing or enforcing noncompete clauses on workers. The proposed rule will have a public comment window of 60 days after the rule is published in the Federal Register (the rule has not been published in the Federal Register yet).

Rationale for the Proposed Rule

The FTC's proposed rule is based on President Joe Biden's 2021 Executive Order on Promoting Competition in the American Economy, which encouraged the FTC to exercise its statutory rule-making authority under the Federal Trade Commission Act to "curtail the unfair use of non-compete clauses and other clauses or agreements that may unfairly limit worker mobility."

Overview of the Proposed Rule

If adopted, the proposed rule would:

- Ban employers from entering into noncompete clauses with workers and independent contractors;
- Require employers to rescind existing noncompete clauses with employees; and
- Require employers to actively inform their employees that their noncompete agreements are no longer in effect.

Impact on Employers

At this stage, the proposed rule does not create any new obligations for employers. However, employers that use noncompete agreements should become familiar with the proposal. Interested employers should submit any comments to the FTC within the 60-day window the agency will allow for feedback.

Important Dates

Jan. 5, 2023

The FTC announced a proposed rule that would ban noncompete agreements.

March 2023

The deadline for submitting public comment on the proposed rule is 60 days after publication in the Federal Register. Assuming the proposal is published in January, all comments will need to be received before the month of March is over.

A 2021 presidential executive order encouraged the FTC to curtail the use of clauses or agreements that unfairly limit worker mobility.
