



A Robinson+Cole Legal Update

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FTC Proposes Rule Prohibiting Employee Noncompete Agreements and Broadly-Worded Non-Disclosure Agreements

Authored by [Janet Kljyan](#), [Ian T. Clarke-Fisher](#), and [Stephen W. Aronson](#)

On January 5, 2023, the Federal Trade Commission (FTC) proposed a [new rule](#) that would prohibit employers from imposing post-employment noncompete restrictions on their workers. The proposed rule, if adopted as drafted, would have broad and retroactive effect.

The proposed ban makes no distinction between lower-paid employees versus executive-level employees and applies to all industries and types of workers, including independent contractors and unpaid interns. The only express exceptions to the ban are noncompete agreements imposed by a franchisor on a franchisee and on the seller of a business who owns at least 25 percent of the ownership interest in the business being sold.

The proposed ban also applies to “de facto” noncompete restrictions, meaning other types of employment restrictions—such as broad non-disclosure or customer non-solicitation agreements—potentially could be impacted if they are so broad in scope as to have the effect of preventing a worker from seeking or accepting employment after leaving their current employment. For example, a broad non-solicitation restriction in an industry or business in which the customer pool is highly limited could violate the ban.

The proposed ban, as drafted, seemingly will impact existing noncompete restrictions on current and former workers. If the rule goes into effect as presently drafted, employers will be required to affirmatively rescind existing noncompete restrictions within six months of the effective date of the ban. The rule contains proposed language an employer may use to satisfy its obligation to notify workers of the rescission.

The proposed rule contemplates superseding any inconsistent state or local regulation and is open to public comment for 60 days. If the rule is enacted as presently drafted, legal challenges are likely, with the rule’s retroactive effect providing special impetus for challenges.

Employers may wish to contact legal counsel experienced in advising and litigating noncompete agreements for guidance on this proposed new rule.

For more information, contact any of the authors listed above.

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