



FTC Proposes Rule to Ban Noncompete Clauses

The Federal Trade Commission (FTC) announced last week that the process for a proposed rule was underway, starting with a public comment period. This broad action impacts employers' relationships with various types of workers, whether paid or unpaid. The FTC estimated that implementation of the new rule could increase earnings for workers in the United States by almost \$300 billion per year.

Using its Section 5 authority, the FTC is proposing a ban on non-compete clauses in employment contracts. The proposal would bar employers from entering into or enforcing such clauses with employees or independent contractors and require companies to nullify any existing ones within six months. Non-disclosure agreements could be considered non-competes pending on the language of the agreement. The ban would exempt companies that want to require an owner or partner selling a business from immediately re-entering the field. This action comes after a few states have banned non-competes and after a July 2021 executive order on competition where President Biden urged the FTC to move forward with new rules on non-compete clauses. A coalition of groups including the labor organizations AFL-CIO and the Service Employees International Union, Democratic senators and attorneys general from California, Illinois and 17 other states support a rule. Opposing the rule, the U.S. Chamber of Commerce called the FTC's action "blatantly unlawful". Expect other business stakeholders to join in opposition, which will likely lead to future litigation on it.

Also, on Wednesday, the FTC announced cases against three companies – Ardagh Group SA, Owens-Illinois Group Inc. and Prudential Security Inc. – for requiring workers to enter illegal non-compete agreements. Each of the companies agreed to a settlement in which they promised to stop requiring workers to enter non-competes and would inform former employees that the agreements were now void.

The agency will accept public comment on the proposal for 60 days and consider those submissions before it issues a final version of the rule.

The press release from the FTC detailing the proposed rule can be found [here](#).

Details included in the proposed rule can be found [here](#).

Please contact a member of your Michael Best Strategies servicing team if you have any questions about the proposed rule or are interested in submitting comments.

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MBS Federal Team

Denise Bode

Partner & Lead Federal Practice | Michael Best Strategies

dabode@michaelbeststrategies.com

T. 202.844.3804

[Bio](#)

Sarah Helton

Partner | Michael Best Strategies

schelton@michaelbeststrategies.com

T. 202.747.9575

[Bio](#)

Tami Buckner

Partner | Michael Best Strategies

tjbuckner@michaelbeststrategies.com

T. 202.844.3821

[Bio](#)

Erik Berdy

Partner | Michael Best Strategies

emberdy@michaelbeststrategies.com

T. 202.697.1516

[Bio](#)

Alex Angelson

Principal | Michael Best Strategies

ajangelson@michaelbeststrategies.com

T. 202.844.3822

[Bio](#)

Lucia M. Alonzo

Principal | Michael Best Strategies

lmalonzo@michaelbeststrategies.com

T. 202.844.3836

[Bio](#)

Patrick Firth

Jenette Morell

Principal | Michael Best Strategies

Principal | Michael Best Strategies

plfirth@michaelbeststrategies.com

T. 202.844.3828

[Bio](#)

Andrea Riccio

Principal | Michael Best Strategies

amriccio@michaelbeststrategies.com

T. 202.747.9561

[Bio](#)

Emily Green

Legislative Assistant | Michael Best Strategies

ejgreen@michaelbeststrategies.com

T. 202.747.9566

[Bio](#)

jenette.morell@michaelbeststrategies.com

T. 202.595.7924

[Bio](#)

Bridget Visconti

Associate | Michael Best Strategies

bfvisconti@michaelbeststrategies.com

T. 202.595.7931

[Bio](#)

Rachel Spivey

Legislative Assistant | Michael Best Strategies

rjspivey@michaelbeststrategies.com

T. 202.844.3830

[Bio](#)