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FEDERAL TRADE COMMISSION BANS MOST NONCOMPETE AGREEMENTS

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On April 23, 2024, the Federal Trade Commission ("FTC") adopted a rule outlawing most noncompete clauses and agreements for US workers. The only exception to the rule, called the "Noncompete Rule," is existing agreements for certain senior executives.

Ban on New Post-Employment Restrictions. The law, once effective, will comprehensively ban all new noncompete arrangements with all "workers." The law will be effective 120 days after the FTC formally publishes it. Currently, the FTC has not announced a publication date.

Limited Exceptions for Existing Restrictions. Existing noncompetition restrictions will also be unenforceable, with the exception of restrictions on "senior executives" that were in effect before the law's enactment. A senior executive is defined as a person who made more than \$151,164 in the prior year and is in a policy-making position. The FTC intends to apply this exemption to the highest levels of a business entity.

Formal Notice Required Soon. Employers must notify any restricted worker that the employer will not and cannot enforce the worker's noncompete after the law's effective date. This notice must be provided before the law's effective date and can be by email, text, or regular mail. The FTC provides a model form of notice that can be used.

Law Expands the Definition of a " Noncompete Clause." The law applies to any policy or contractual term that "has the effect of prohibiting the worker from seeking or representing employment." In addition, employers cannot represent that a worker is subject to a noncompete restriction.

Exceptions for Business Sales and Franchises. The Noncompete Rule does not apply to any noncompete restriction entered into by a person as part of selling that person's ownership interest in a business or its assets. Further, the law does not apply to agreements between a franchisee and a franchisor because the FTC considers that relationship to be similar to arrangements between separate businesses.

Other Restrictive Agreements May be Permitted. The law does not ban other types of restrictive agreements, such as non-disclosure agreements, non-solicitation agreements, or non-recruitment agreements, unless those agreements meet the definition of a noncompete clause by preventing the worker from being employed.

The U.S. Chamber of Commerce stated it will sue the FTC to block the law. Other businesses or groups may also challenge its legality.

If you have questions, please do not hesitate to contact us.

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