

MAY 2024

**FEDERAL TRADE COMMISSION ISSUES A
FINAL RULE THAT NONCOMPETE CLAUSES
ARE BANNED NATIONWIDE IN 120 DAYS**

POZZUOLO RODDEN POZZUOLO, P.C.
COUNSELORS AT LAW
2033 WALNUT STREET, PHILADELPHIA, PA 19103
215-977-8200/FAX 215-977-9663
www.pozzuolo.com



**FEDERAL TRADE COMMISSION ISSUES A FINAL RULE
THAT NONCOMPETE CLAUSES ARE BANNED
NATIONWIDE IN 120 DAYS**

Below is a ruling issued this week by the Federal Trade Commission (FTC) banning non-competes nationwide. The FTC ruling is crucial for all businesses having employees with non-compete clauses. This ruling becomes effective 120 days after publication in the Federal Register. Below is a copy of the final ruling banning non-competes nationwide and should be read by all businesses.

FTC ANNOUNCES RULE BANNING NON-COMPETES

FTC's final rule will generate over 8,500 new businesses each year, raise worker wages, lower health care costs, and boost innovation. Today, the Federal Trade Commission [issued a final rule](#) to promote competition by banning non-competes nationwide, protecting the fundamental freedom of workers to change jobs, increasing innovation, and fostering new business formation.

“Non-compete clauses keep wages low, suppress new ideas, and rob the American economy of dynamism, including from the more than 8,500 new startups that would be created a year once non-competes are banned,” said FTC Chair Lina M. Khan. “The FTC’s final rule to ban non-competes will ensure Americans have the freedom to pursue a new job, start a new business, or bring a new idea to market.”

The FTC estimates that the final rule banning non-competes will lead to new business formation growing by 2.7% per year, resulting in more than 8,500 additional new businesses created each year. The final rule is expected to result in higher earnings for workers, with estimated earnings increasing for the average worker by an additional \$524 per year, and it is expected to lower health care costs by up to \$194 billion over the next decade. In addition, the final rule is expected to help drive innovation, leading to an estimated average increase of 17,000 to 29,000 more patents each year for the next 10 years under the final rule.

Non-competes are a widespread and often exploitative practice imposing contractual conditions that prevent workers from taking a new job or starting a new business. Non-competes often force workers to either stay in a job they want to leave or bear other significant harms and costs, such as being forced to switch to a lower-paying field, being forced to relocate, being forced to leave the workforce altogether, or being forced to defend against expensive litigation. An estimated 30 million workers—nearly one in five Americans—are subject to a non-compete.

Under the FTC’s new rule, existing non-competes for the vast majority of workers will no longer be enforceable after the rule’s effective date. Existing non-competes for senior executives - who represent less than 0.75% of workers - can remain in force under the FTC’s final rule, but employers are banned from entering into or attempting to enforce any new non-competes, even if they involve senior executives. Employers will be required to provide notice to workers other than senior executives who are bound by an existing non-compete that they will not be enforcing any non-competes against them.

In January 2023, the FTC issued a [proposed rule](#) which was subject to a 90-day public comment period. The FTC received more than 26,000 comments on the proposed rule, with over 25,000 comments in support of the FTC’s proposed ban on non-competes. The comments informed the FTC’s final rulemaking process, with the FTC carefully reviewing each comment and making changes to the proposed rule in response to the public’s feedback.

In the final rule, the Commission has determined that it is an unfair method of competition, and therefore a violation of Section 5 of the FTC Act, for employers to enter into non-

competes with workers and to enforce certain non-competes.

The Commission found that non-competes tend to negatively affect competitive conditions in labor markets by inhibiting efficient matching between workers and employers. The Commission also found that non-competes tend to negatively affect competitive conditions in product and service markets, inhibiting new business formation and innovation. There is also evidence that non-competes lead to increased market concentration and higher prices for consumers.

Alternatives to Non-competes

The Commission found that employers have several alternatives to non-competes that still enable firms to protect their investments without having to enforce a non-compete.

Trade secret laws and non-disclosure agreements (NDAs) both provide employers with well-established means to protect proprietary and other sensitive information. Researchers estimate that over 95% of workers with a non-compete already have an NDA.

The Commission also finds that instead of using non-competes to lock in workers, employers that wish to retain employees can compete on the merits for the worker's labor services by improving wages and working conditions.

Changes from the NPRM

Under the final rule, existing non-competes for senior executives can remain in force. Employers, however, are prohibited from entering into or enforcing new non-competes with senior executives. The final rule defines senior executives as workers earning more than \$151,164 annually and who are in policy-making positions.

Additionally, the Commission has eliminated a provision in the proposed rule that would have required employers to legally modify existing non-competes by formally rescinding them. That change will help to streamline compliance.

Instead, under the final rule, employers will simply have to provide notice to workers bound to an existing non-compete that the non-compete agreement will not be enforced against them in the future. To aid employers' compliance with this requirement, the Commission has included [model language](#) in the final rule that employers can use to communicate to workers.

The Commission vote to approve the issuance of the final rule was 3-2 with Commissioners Melissa Holyoak and Andrew N. Ferguson voting no. Commissioners' written statements will follow at a later date.

The final rule will become effective 120 days after publication in the Federal Register.

Once the rule is effective, market participants can report information about a suspected

violation of the rule to the Bureau of Competition by emailing noncompete@ftc.gov. The Federal Trade Commission [develops policy initiatives](#) on issues that affect competition, consumers, and the U.S. economy. The FTC will never demand money, make threats, tell you to transfer money, or promise you a prize. Follow the [FTC on social media](#), read [consumer alerts](#) and the [business blog](#), and [sign up to get the latest FTC news and alerts](#).

If anyone has any questions or comments, do not hesitate to [contact us](#). This ruling is crucial to closely held businesses.

Please visit our website: <http://www.pozzuolo.com>

To unsubscribe to this e-newsletter email: info@pozzuolo.com