
The FTC Proposes Banning Noncompete Restrictions

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The Federal Trade Commission (“FTC”) has proposed a rule prohibiting employers from imposing noncompete restrictions on their employees and requiring employers to rescind existing noncompete restrictions. The FTC is basing this proposed rule on its preliminary finding that noncompete restrictions are an unfair method of competition in violation of Section 5 of the Federal Trade Commission Act (the “FTC Act”). If adopted, subject to likely judicial challenges, this rule would invalidate noncompete restrictions imposed by employers across the country, many of which have been in place and deemed enforceable for decades. It would likely impact almost every American company and reshape how they engage with current and future employees.

The proposed rule follows a July 9, 2021 Executive Order, in which President Biden called for curtailing the use of noncompete restrictions. It also follows two FTC consent orders announced on January 4, 2023 that found three companies and two individuals had violated the FTC Act’s prohibition on unfair methods of competition by imposing noncompete restrictions on thousands of workers. These are the first standalone Section 5 actions since the FTC announced a revised policy that extends Section 5’s scope beyond other antitrust laws to include conduct that tends to negatively affect competition. The FTC has stated that the proposed rule and orders align with the revised policy to “reinvigorate” Section 5. The FTC is increasingly likely to continue using standalone Section 5 actions to challenge allegedly unfair methods of competition.