

CLIENT ALERTS

Butzel Helps Lead the Response to the FTC's Attempt to Regulate Non-Competes.

Client Alert

4.21.2023

Taking the Lead

In March 2020, more than 20 law firms throughout the country united to sign what would become the first of several joint letters to the Federal Trade Commission (FTC), imploring the Commission to give consideration to the idea that our federal government should curtail its interference with state non-compete laws. Since that time, Butzel has continued to take a stance, joining our colleagues from across the legal community nationally to make known our concerns surrounding the unintended consequences we project will undermine the intended benefits of the FTC's proposed rule.

History

In July 2021, Butzel signed a second letter to the FTC—and the White House this time as well—again giving voice to our collective concerns following the issuance of President Biden's July 9, 2021 Executive Order encouraging the FTC to consider promulgating rules to regulate the use of non-compete clauses. Our letter outlined common misconceptions surrounding the purpose of non-compete agreements and included recommendations for the FTC to consider that would further the objectives of the Executive Order. Following issuance of the Executive Order a two-day workshop was held "to discuss efforts to promote competitive labor markets and worker mobility," consisting of panels, presentations, and Q&A addressing "issues affecting labor markets and the welfare of workers, including: labor monopsony; the increased use of restrictive contractual clauses in labor agreements, including non-competes and non-disclosure agreements . . . the role of other federal agencies in ensuring fair competition in labor markets . . ."

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Following the FTC's workshop, in December 2021, Butzel again joined in signing yet a third letter to the FTC, addressing several issues raised during the workshop and reaffirming the position that the federal government should curtail involvement with regulating non-compete and similar agreements that are already governed by state law.

Update

On April 19, 2023, in response to the FTC's request for comments, Butzel took action by signing a fourth letter to the FTC, encouraging a cautious approach to test its hypotheses about the impacts of the proposed ban on non-compete agreements. The letter outlines an incremental path we believe would accomplish most, if not all, of the FTC's objectives, with far less risk to workers, companies, and the economy.

Butzel's Non-Compete/Trade Secret team continues to diligently monitor this ongoing situation and will keep you up to date as developments occur. Should you have questions or comments, please contact the authors of this article or your Butzel attorney.

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