

CLIENT ALERTS

FTC to Vote on Rule Banning Non-Compete Agreements

Client Alert

4.22.2024

There will be another chapter in the Federal Trade Commission's (FTC) ongoing battle against non-compete agreements. This topic has been covered extensively in our previous client alerts, but some brief background would be helpful. All the way back in July of 2021, President Biden signed an Executive Order which encouraged the FTC to use its rulemaking authority to stop "unfair" non-competes and other agreements that limit worker mobility. The FTC published a notice of proposed rulemaking to ban non-compete agreements 18 months later in January of 2023. Butzel helped to lead the charge in opposition to the FTC's proposal. In total, the FTC received nearly 27,000 comments during the 90-day notice and comment period that ended in April of 2023. The proposed rule sat idle while the FTC considered the comments it received, but the wait is over. The FTC provided notice on April 16 that it will hold a special meeting on April 23, 2024, at 2 pm to vote on whether to issue a proposed final rule banning non-compete agreements.

As a reminder of what is at stake, the FTC's proposed rule would generally prohibit employers from using non-compete agreements. It is unclear what significant changes, if any, the FTC made to the proposed rule in response to the comments it received. While the final rule is yet to be revealed, it's expected the final rule could prohibit employers from:

- Entering into or attempting to enter into a non-compete with a worker;
- Maintaining a non-compete with a worker; and/or
- Representing to a worker, under certain circumstances, that the worker is subject to a non-compete.

The final rule could apply broadly to employees, independent contractors, and anyone who works for an employer, whether paid or unpaid. Based on the FTC's initial proposal, it's possible

Related People

Sarah L. Nirenberg
Shareholder

Blake Padgett
Shareholder

Related Services

Non-Compete & Trade Secret

CLIENT ALERTS

the final rule could also extend past non-compete agreements and ban “de facto” non-competes, which would arguably include most currently used non-disclosure agreements. The rule will be explained in more detail if the Commission votes to issue a final rule on Tuesday. If a final rule is issued, it is important to remember it will not become effective immediately. The rule would not take effect until 60 days after it is published in the Federal Register. The proposed rule also indicated there would be an additional 120 days until employers are required to comply with the rule (i.e., 180 days after publication in the Federal Register).

Butzel's Non-Compete/Trade Secret Team continues to diligently monitor this ongoing situation and we will provide updates following the Commission's meeting on April 23rd. Should you have questions or comments, please contact the authors of this article or your Butzel attorney.

Sarah L. Nirenberg

248.258.2919

nirenberg@butzel.com

Blake Padget

248.258.1305

padget@butzel.com