

FTC Bans Nearly All Non-Compete Agreements

Update

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The Federal Trade Commission (FTC) on Tuesday issued a final rule banning non-compete agreements that prevent workers from working for a competitor or starting a competing business (the Rule). The Rule requires employers to provide notice to workers, except for senior executives, who are bound by an existing non-compete agreement, that such agreements are no longer enforceable.

The Rule adopts a two-pronged test for determining if an employee is a “senior executive”:

- 1) whether an employee is in a policy-making position; and
- 2) whether the employee earns total annual compensation of at least \$151,164.

Employers are banned from entering into, or attempting to enter into, any future non-compete agreements, with either employees or senior executives, except for non-compete agreements entered into pursuant to the bona fide sale of a business.

The final Rule is set to become effective in 120 days and would impact an estimated 30 million workers. However, a lawsuit challenging the Rule was filed immediately after the Rule’s issuance on Tuesday. More challenges are expected.

Bracewell will continue to monitor, and provide updates on, this legal development.

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