

# Is This the End of the Employee Non-Compete Clause?

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For employers out there who have fretted and even agonized over whether your non-compete agreements have the right scope and duration to pass legal muster, your worries may be over – because soon you may not be able to require a non-compete agreement at all.

The Federal Trade Commission (FTC) has issued a final rule determining that non-compete clauses constitute an unfair method of competition under the Federal Trade Commission Act. The new FTC rule imposes a comprehensive ban on new non-compete agreements and renders existing agreements unenforceable as of the rule's effective date (120 days after publication in the Federal Register). In fact, employers will be required to inform employees with existing agreements that they are no longer valid.

There is a limited carve-out for “senior executives” with existing agreements. “Senior executives” are those individuals who are earning more than \$151,164 and are in “policy-making position.” The FTC estimates that this is fewer than 1% of workers. The rule also does not apply to agreements entered into pursuant to a legitimate sale of a business entity or causes of action accruing before the rule's effective date.

The rule has not yet been published and legal challenges are certainly anticipated, but employers are encouraged to take steps now to protect client information and other trade secrets by means of existing laws, non-disclosure agreements, patents or other legal means.

This is also a good time to review the non-compete issue with legal counsel to ensure your organization is best positioned should the final rule pass what is expected to be intense legal scrutiny and potential challenges in court.