

New FTC Proposed Rule to Ban Non-Compete Clauses

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On January 5, 2023, the Federal Trade Commission ("FTC") released a [Notice of Proposed Rulemaking](#) that, if implemented, would seek to ban employers from imposing or enforcing non-compete clauses on employees. The FTC's proposed rule would functionally serve as a complete ban on non-compete clauses and employment policies that have a similar effect. Employers would also be prohibited from utilizing other methods such as overbroad non-solicitation provisions and requiring reimbursement from employees for certain trainings, which the FTC claims were used to restrain employees from leaving as non-compete provisions began receiving tougher scrutiny.

The proposed rule is the latest signal of the Biden Administration's support for labor and is part of a larger trend towards more vigorous federal regulation of the employment relationship. It is estimated that 16% to 18% of all U.S. workers are subject to non-compete clauses. The FTC claims the proposed rule could increase workers' earnings by nearly \$300 billion per year, however financial groups such as the Chamber of Commerce challenge these findings and the need for the rule.

The proposed rule, if enacted and upheld by the courts, would have retroactive effects requiring employers with existing non-compete agreements to void them within 180 days and to inform current and past employees that the agreements have been canceled.

If you have any questions about the latest FTC proposed rule or would like to submit comment on the proposed rule, please contact [Jill Sebest Welch](#), [Justin Tomevi](#), [Charmaine Nyman](#), or anyone in Barley Snyder's [Employment](#) or [Litigation](#) practice groups.

DISCLAIMER: The information in this alert should not be construed as legal advice to be relied upon nor to create an attorney/client relationship. Please note that the reader's or an industry's specific situation or circumstances will vary and, thus, for example, an approach that is advisable in one industry may not be appropriate in another industry. If you have questions about your situation or about how to apply information contained in this alert to your situation or industry, you should reach out to an attorney.

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