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## FTC Proposes Rule Banning Non-Compete Agreements with Employees

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On January 5, 2023, the Federal Trade Commission issued a Notice of Proposed Rulemaking that seeks to ban employers from imposing or enforcing non-compete clauses as an “unfair method of competition.” See 16 CFR Part 910. The Notice follows President Joe Biden’s July 2021 Executive Order encouraging the FTC to exercise its statutory rule-making authority under Section 5 of the FTC Act “to curtail the unfair use of non-compete clauses.” The FTC Commissioners voted 3-1 in favor of the proposed rule, with Commissioner Wilson dissenting that the proposed rule exceeds the FTC’s authority, conflicts with existing precedent and is not supported by an adequate factual record.

The proposed rule would ban non-compete clauses (including non-disclosure and non-solicitation clauses that function as such) for all workers regardless of position, including independent contractors and even volunteers. Employers would also be required to rescind and nullify existing non-compete agreements with current and former workers within 180 days of publication of the final rule. The only exception to the proposed rule would apply to sales of a business.

The FTC is accepting public comment on the proposed rule for 60 days, after which it may make changes and issue a final rule. The Notice offers several possible alternatives to the proposed rule (including that the ban would only apply to workers earning below a certain threshold, create a rebuttable presumption of illegality as opposed to a per se rule, or apply differently to senior executives), but the FTC is proposing moving forward with a categorical ban. Court challenges to the FTC’s authority and the basis for the proposed rule are fully expected.

RSHC has a deep bench of lawyers with decades of experience litigating covenants not to compete and antitrust lawyers familiar with defending against FTC complaints and the competitive effects issues raised by this proposed rulemaking. Click on the hyperlinks for more information about RSHC’s [Litigation & Trial services](#) and our [Antitrust & Competition practice team](#).

## Client **Alert**

For more information, please contact:

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