

Biden Executive Order Aims to Promote Competition by Curtailing Non-Compete Agreements

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As part of the broad [Executive Order on Promoting Competition in the American Economy](#) issued Friday, July 9, 2021, President Biden is requesting that the Federal Trade Commission (FTC) ban or limit non-compete agreements. The order (which also calls on the FTC to ban unnecessary occupational licensing) aims to provide American workers with options and flexibility in their employment and to encourage innovation in the economy. According to White House press secretary Jen Psaki, the move will fulfill Biden's "campaign promise to promote competition in the labor markets."

Non-compete agreements are widely used in the private sector. According to a [2019 study by the Economic Policy Institute](#), the White House estimates that non-compete agreements are used by roughly half of private-sector businesses for at least some of their employees, affecting anywhere between 36 and 60 million workers.

A broad-sweeping federal rule would represent a significant departure and will likely be challenged by businesses. There is also a question as to whether the FTC has the authority to enact a non-compete ban. To date, the regulation of non-compete agreements has largely been left to the states. Some states, such as California, already ban non-compete agreements, and a number of states prohibit their use particularly with low-wage workers. Given the likelihood of legal challenges, the FTC may take a narrow approach in lieu of an outright ban, such as banning non-compete agreements for low-wage workers only, for example. (Of note, the term "low-wage worker" does not have any official definition in the federal context.)

While this executive order does not have an immediate impact on existing private-sector non-compete agreements, we can expect further guidance from the FTC to illuminate what the future may hold. For now, employers are encouraged to review any non-compete agreements in place, and prepare for the possibility that changes or revisions may be required in the near future.

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