

FTC Proposes Rule Prohibiting Employer Non-Compete Agreements

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On January 5, 2023, the Federal Trade Commission (FTC) followed up on President Biden's July 9, 2021 Executive Order requesting a broad [ban on employer non-compete agreements](#). The proposed rule, based on the proposition that such agreements violate the Federal Trade Commission Act as an unfair competition method, would constitute a total ban on nearly all non-compete agreements.

As written, the rule defines non-compete broadly as a contractual provision preventing an employee from "seeking or accepting employment with a person, or operating a business," after the employment relationship ends. It also includes a functional test to determine whether a clause that is not explicitly a non-compete may be a de facto non-compete.

In addition to prohibiting employers from entering into non-competes with their employees, the rule would also invalidate existing non-competes, including a rescission provision requiring employers to provide notice to both current and former employees that their non-competes are no longer in force.

According to a [2019 study by the Economic Policy Institute](#), non-compete agreements are estimated to be used by roughly half of private-sector businesses, and anywhere between 36 and 60 million Americans are affected. The White House's estimates are similar: that non-compete agreements are used by roughly half of private-sector businesses for at least some of their employees. The FTC estimates that the competition promoted by this new rule could increase wages "[by nearly \\$300 billion per year](#)" nationwide.

The rule is subject to a 60-day public comment period, during which citizens may weigh in on whether the rule should be published in the Federal Register and become an official regulation. If it does go into effect, employers will have to comply within 180 days.

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