



Client Alert
May 2, 2024

FTC Non-Compete Ban

Workplace Violence Prevention Plan Deadline Reminder



FTC Moves to Ban Most Employee Non-Compete Agreements

by Erin L. McDermit, Beth Knodel & Meera Patel

On April 23, 2024, the Federal Trade Commission (FTC) approved a proposed final rule banning and voiding most employee non-compete clauses and agreements in the United States. The rule, the first of its kind under federal law, is slated to take effect 120 days after it is published in the Federal Register. Though the rule has not been published yet (starting the 120 clock), it is already being challenged in state and federal courts.

The rule negates existing non-compete restrictions for all employees except non-executive employees making an annual salary of more than \$151,164 who have policy making authority in their positions. The rule also prevents future non-competes with employees. Additionally, the rule requires employers to provide written notice on or before the rule's effective date to impacted employees that the existing non-compete clause will not be and cannot legally be enforced against them. The new rule also has an exception that allows non-compete

restrictions in connection with a bona fide sale of a business.

Currently, non-compete restrictions are permitted in many states, and can be enforced against employees if the restriction is appropriately tailored in scope to protect the employer's legitimate business interests. The final FTC rule, coming from a federal agency, aligns with California's statutory prohibition against employee non-competes and illustrates a growing, nationwide trend against non-competes.

Unless a court stops the rule from becoming effective, employers should prepare for this new rule. We recommend employers review existing employee agreements to: 1) assess existing non-compete restrictions with employees and their scope; and 2) identify employees who will receive the written notice required under the new FTC rule.

To effectively protect company confidential information, intellectual property, and trade secrets, we recommend employers have legal counsel review existing employee non-disclosure, confidentiality, and proprietary information and inventions assignment agreements, which prohibit the use and

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disclosure of confidential and proprietary employer information post-employment, and which can be an employer's best protection of its confidential information and business interests in the absence of non-competes.

For questions regarding employee non-compete restrictions, employment agreements, and employee policies, contact M&H's Employment team: Erin L. McDermit at emcdermit@mh-llp.com or Beth Knodel at bknodel@mh-llp.com.



For review of your existing confidentiality and proprietary rights agreements, contact M&H's IP team: Michael Plumleigh at mplumleigh@mh-llp.com or Meera Patel at mpatel@mh-llp.com.

Reminder:

July 1, 2024 Deadline for Workplace Violence Prevention Plan

by Erin L. McDermit & Beth Knodel

California's new Labor Code section 6401.9 requires employers to establish, implement, and maintain a written Workplace Violence Prevention Plan (WVPP) by July 1, 2024. The new law also requires employers to develop and provide effective employee trainings on workplace violence. The WVPP can be incorporated into an employer's existing Injury and Illness Prevention Plan (IIPP).

Employers who need legal counsel to implement the WVPP by the deadline, schedule a training, or review and revise IIPPs should contact M&H's employment team: Erin L. McDermit at emcdermit@mh-llp.com or Beth Knodel at bknodel@mh-llp.com.

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