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LEGAL ALERT: FTC ISSUES BAN ON NON-COMPETE AGREEMENT

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On April 23, 2024, the Federal Trade Commission (“FTC”) approved a rule to promote increased labor competition by banning non-compete agreements nationwide.[1] Non-compete agreements are commonly signed by workers agreeing not to join their employers’ rivals or launch competing businesses, especially in sales organizations, but also in fields as diverse as health care, manufacturing, and pharmaceuticals. As drafted, the rule will have a significant impact on virtually every industry. By late summer 2024, most employers, except for non-profit organizations, will not be able to enforce or obtain non-competes in the U.S. except in extremely narrow circumstances.

Existing non-competes for executives who earn more than \$151,164 a year in a “policy making position” can remain in place. However, existing non-competes with lower-level workers would become unenforceable after the rule goes into effect in six months. Prior to the effective date, the Final Rule requires employers and businesses to provide notice to current and former workers who are not senior executives and who are bound by existing non-competes that they will not be enforcing any non-compete restrictions against them.

Though the rule is set to take effect in 120 days, multiple entities have already announced their intentions to file suit to block the rule from going into effect. On April 24, 2024, the U.S. Chamber of Commerce filed such a lawsuit, asserting both statutory and constitutional grounds. At this time, it is difficult to predict with certainty how the rule will fare in courts.

Given the litany of legal challenges expected to follow the FTC’s non-compete rule, we expect that the federal courts will affect stays or injunctions that pause the enforcement of the rule. While it could be years until the litigation plays out and we find out if this rule will be enjoined or invalidated, employers should examine their own non-compete agreements with employees and consider alternative protective agreements such as termination notice requirements, confidentiality agreements, and non-solicitation clauses.

Feel free to contact our office to discuss how this rule could affect the way you run your business and how you recruit and retain employees.

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