

President Biden Takes First Step to Limit Non-Compete Agreements Nationally

Written by Michael L. Rosen, Allison Anderson

July 14, 2021

President Biden promised during his campaign that if elected he would take federal action against non-competition agreements. On July 9, 2021, Biden issued a broad executive order aimed at making good on that promise. He asked the Federal Trade Commission (FTC) to issue a rule either banning or limiting non-competition agreements. Such a rule, he said, will promote competition and raise wages, by removing barriers to job mobility.

Non-competition agreements are widely used in private industry, and traditionally states have regulated the enforceability of these agreements. Some states, like California and Oklahoma, ban non-competes. Many more states limit the use of non-competition agreements by imposing requirements on enforceability. For instance, several states, like Massachusetts and New Jersey, prohibit using non-competes with non-exempt or lower-wage workers. Many of these states also require that certain terms be met for there to be an enforceable agreement. These terms range from defining the number of days an employee must be allowed to review a non-compete before signing, to requirements that employers pay something extra, beyond an employee's salary, to enforce a non-compete. While the rules vary in different jurisdictions, the overall trend has been to narrow the use and scope of non-competition agreements.

Biden's executive order shifts the discussion to the national stage. Never before has there been a federal rule limiting if or when non-competes can be used, mostly because contract law is a creature of state law. This has left many to wonder how far the FTC will go. Some speculate that an outright ban is coming and others guess that restrictions (like we have in Massachusetts) are more likely. Either way, it is near certain that whatever rule the FTC issues will be challenged in the courts. Stay tuned as this issue continues to develop.

RELATED INDUSTRIES

- [Technology](#)
- [Cannabis](#)
- [Life Sciences](#)

RELATED PRACTICES

- [Labor & Employment](#)

This communication is intended for general information purposes and as a service to clients and friends of Foley Hoag LLP. This communication should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an attorney-client relationship.

United States Treasury Regulations require us to disclose the following: Any tax advice included in this document was not intended or written to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

Attorney advertising. Prior results do not guarantee a similar outcome. © 2017 Foley Hoag LLP. All rights reserved.