



FTC Releases Final Rule to Ban Non-Compete Clauses

Background:

On April 22, 2024, the Federal Trade Commission (FTC) voted to [implement its final non-compete rule](#). Prior to passing the rule, the Commission specifically cited the concerns they heard from physicians, and the need to protect doctors from non-competes as a justification for the rule's implementation.

Executive Summary:

- The rule bans all new non-compete clauses for workers, including senior executives (except some non-profit organizations).
- Current non-competes:
 - For senior executives, already enacted non-competes will remain in effect, but future non-competes will be prohibited.
 - For all other workers, the non-competes will be deemed unenforceable. Employers will be required to notify current and past employees that the agreements are no longer binding.

Exclusions:

- **Employers from non-profits** – that "actually engaged in business for only charitable purposes" may be excluded from the rule. The Commission made it clear in the final rule that merely having IRS tax exemption status will not insulate an organization from the rule as the FTC has "authority to regulate so-called nonprofit corporations, associations, and all other entities if they are in fact profit-making enterprises."
- **Senior executives** – current non-competes will remain in effect, but future non-competes will be prohibited. Senior executives are workers who:
 - Earn more than \$151,164 annually, and
 - Are in a senior policy making role at the level of a president, chief executive officer, or an equivalent office.
 - The rule specifically states that "a physician who works within a hospital system but does not have policymaking authority over the organization as a whole would not qualify (as a senior executive)." However, "partners in a business, such as physician partners of an independent physician practice, would also generally qualify as senior executives...assuming the partners have authority to make policy decisions about the business."
- **Sale of business exception** – non-competes tied to the sale of a business, like a physician practice, would still be allowed under the FTC rule in limited circumstances.

Implementation: The rule is set to take effect 120 days after it is published in the Federal Register (August-September 2024). There will, however, almost certainly be legal challenges from groups like the Chamber of Commerce which will seek to pause, delay, and even prevent the rule's implementation.