

The FTC Has Issued a Proposed Rule Making Non-Competes Unlawful

January 19, 2023

By Daniel I. Goldberg

On January 5th, the FTC issued a proposed rule prohibiting businesses from entering into or maintaining non-compete agreements with workers (employees or independent contractors).

While non-disclosure agreements and non-solicitation (of customer and employee) agreements are generally, permitted under the proposed rule, the FTC intends to take a functional approach to enforcement. So, even restrictions that are not denominated as non-competes but effectively restrict an employee's ability to seek or accept employment will be prohibited. Significantly, the new rule would require employers to rescind existing non-competes and actively inform workers that they are no longer in effect.

The only exception contained in the proposed rule is for persons selling a business or their entire interest in a business or persons owning at least 25% of a business as to which all or substantially all of the assets are being sold.

The FTC has solicited comments on the proposed rule – which may be filed through March 10th, 2023.

Please reach out to me or my colleagues at Offit Kurman regarding questions about the proposed rule or any other employment matter.