

FTC to Vote on the Release of Its Final Rule to Ban Non-compete Clauses

Healthcare Law Alert

FTC to Vote on the Release of Its Final Rule to Ban Non-compete Clauses

Carol Grelecki
Member, Healthcare

John D. Fanburg
Member and Chair, Healthcare

BRACH | EICHLER LLC
Counsellors at Law

April 22, 2024

On April 16, 2024, the Federal Trade Commission (FTC) announced that it will hold a special Open Commission Meeting on Tuesday, April 23, 2024 on whether to issue a proposed final rule that would prevent employers from enforcing non-compete restrictions against their workers. The FTC has stated that the proposed final rule that is being considered would generally prevent “most employers” from using non-compete clauses.

By way of background, following a State of the Union address by President Biden, in which he announced his administration’s intention to eliminate post-employment restrictions on American workers, on January 19, 2023, the FTC published a proposed rule that if enacted would ban virtually all post-employment non-competition agreements. Specifically exempt from the ban would be certain non-competition agreements that are executed in connection with business sale transactions.

Following the publication of the proposed rule, the FTC held a public comment period, which closed on April 19, 2023. The FTC specifically sought comments on whether non-compete clauses between employers and senior executives should be subject to a different standard than non-compete clauses with other workers. The FTC reportedly received 26,000 comments during the comment period.

At Tuesday’s Open Commission Meeting, the FTC will first vote on whether to authorize public disclosure of the proposed final rule that is under consideration. If the FTC votes to authorize public disclosure of the final rule, the Office of Policy Planning will give a staff presentation on the final non-compete rule. The FTC will not be taking further comments from the public during the Open Commission Meeting. The FTC will then vote on whether to issue the final rule.

The Open Commission Meeting can be viewed via webcast, which will be available on the day of the event shortly before the start of the meeting at FTC.gov. The event will also be recorded, and will be available on the FTC's website after the meeting. It is expected that the final rule will be no more stringent than the proposed rule and may contain additional exceptions; however, other than this week's notice, the FTC has not published any definitive information about exceptions that it might be considering.

Brach Eichler will continue to monitor the FTC's activity in this regard, and will schedule a webinar to review and explain how the new FTC rule may impact you.

For more information please contact

Carol Grelecki, Esq., Member, [Healthcare Practice Group](#), at cgrelecki@bracheichler.com or (973) 403-3140

John D. Fanburg, Esq., Managing Member, Chair, [Healthcare Practice Group](#), at jfanburg@bracheichler.com or (973) 403-3107