

The FTC is Challenging Non-Competes – It May Be Time To Review Your Practices

Labor & Employment Law Alert

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NON-COMPETE AGREEMENT

1. Purpose
This agreement, when countersigned below, shall constitute an agreement regarding certain confidential and proprietary information and trade secrets ("Confidential Information") relating to the business of _____ hereinafter referred to as the "Company" and _____ hereinafter referred to as the "Recipient" (collectively referred to as the "Parties"), of the date executed by the Company (the "Effective Date").

The Recipient shall strictly maintain the confidentiality of the Proprietary Information, and completing projects as well as for the everyday business of the Company and its clients/customers.

Compete/Disclosure
The Recipient with the Company and the Time Period shall not: _____

Provide the same or similar information in any way representation of _____ the Company with _____ be representing _____ vice has _____

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Employers may be under the impression that non-compete agreements are not illegal, or that the enforceability of such agreements may be limited only under state or local law, or that the federal government is not actively seeking to prohibit their use. All of those impressions – while perhaps justified – are wrong. Within the past few weeks, the Federal Trade Commission (FTC) published a [proposed order](#) against a nation-wide pest control company, Rollins, Inc., to cease requiring all of its employees (other than its directors, officers and senior managers) to enter into non-compete agreements and also issued letters to thirteen other large pest control companies warning them not to require all their employees to enter into non-compete agreements.

The misimpression arises from the FTC's failed efforts in 2023 to adopt a uniform regulation generally limiting the enforceability of non-compete agreements except in certain limited circumstances. While the FTC has abandoned that one-size-fits-all approach, it is actively investigating individual employers and assessing whether the use of non-competes is "[unjustified, overbroad, or otherwise unfair or anticompetitive.](#)" As the Chairman of the FTC explained in a statement that accompanied the proposed order against Rollins, Inc., an "[indiscriminate 'general policy' approach of requiring every single worker to sign a noncompete agreement irrespective of the worker's position or responsibilities cries out for scrutiny under the antitrust laws.](#)"

Employers should take the opportunity to reassess their non-compete practices. Protecting legitimate business interests, particularly in the context of a corporate transaction or with respect to employees who have access to non-public, competitive information, will almost always be justified. On the other hand, rotely requiring all employees to sign non-competes, without any independent justification to protect confidential information, will invite scrutiny.

For more information about the FTC's actions against non-competes and for legal guidance about structuring a defensible non-compete program, *please contact*:

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