FTC Issues Final Rule Banning Noncompete Agreements

April 30, 2024

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As we reported in our Haynes Boone alert last week here, the Federal Trade Commission (***"FTC"***) issued a final rule banning the use of noncompete clauses in all agreements between employers and their workers, other than (i) noncompetes in effect prior to the effective date of the new rule with "senior executives" (generally, a worker earning at least $151,164 who is in a "policy making position" (generally a president, chief executive officer, or officer who has final authority to make policy decisions that control significant aspects of the business)) and (ii) noncompetes in the sale of business agreements, including bona fide sales of a business, of a person's ownership interest in a business, or substantially all of a business's operating assets.

The final rule is set to become effective on September 4, 2024, unless a court enjoins the implementation of the new rule. At least three cases have been filed challenging the final rule: *Chamber of Commerce of the United States of America v. Federal Trade Commission*, 6:24-cv-00148 (E.D. Tex., Apr. 24, 2024) (the complaint is available here); *Ryan LLC v. Federal Trade Commission*, 3:24-cv-986 (N.D. Tex., Apr. 23, 2024) (the complaint is available here); and *ATS Tree Services LLC v. Federal Trade Commission*, 2:24-cv-01743 (E.D. Pa. Apr. 25, 2024) (the complaint is available here).

We previously discussed that there are certain benefit plans that could be impacted by the final rule here. While waiting for the court cases to be resolved, employers should inventory the agreements and plans they currently have in force that include noncompetes and generate a list of who might qualify as a "senior executive" within their organization. Further, employers should make sure their board of directors and compensation committees understand that the compensation that they think is contingent on compliance with a noncompete may be impacted by either this final rule or the various state law efforts in place attempting to prohibit the enforcement of noncompetes.

The FTC's final rule is available here.

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