

January 10, 2023

## FEDERAL TRADE COMMISSION PROPOSES NEW RULE TO BAR NON-COMPETES FOR EMPLOYEES

On January 5, 2023, the Federal Trade Commission (FTC) issued a notice of proposed rulemaking that, if adopted, would prohibit non-competes in most circumstances.

The FTC's rule proposes to ban non-competition clauses in employment agreements as "an unfair method of competition," rendering such clauses unlawful under Sections 5 and 6(g) of the Federal Trade Commission Act. The proposed rule would apply with equal force to traditional employees, independent contractors, and unpaid workers including volunteers and interns. The proposed ban would also apply retroactively, requiring employers to rescind any non-compete agreements previously entered into before the final rule's effective date, and mandating that employers issue a notice that any non-competition agreement between the employer and employee would not be enforced against the employee.

While this is an aggressive move by the FTC, Employers need not panic. The notice of proposed rule-making is only the first stage in a multi-step process required before any rule will go into effect. The FTC will accept comments on the proposed rule for 60 days after it has been published in the Federal Register. At the conclusion of this notice-and-comment period, the FTC will then publish a final version of the rule. Employers will be given 180 days after the implementation of a final rule to comply.

In addition to this lengthy rule-making process, we anticipate significant legal challenges to the rule, which could also delay any final implementation and enforcement.

### JAH Can Help

Our **Labor and Employment Practice Group** is closely monitoring these developments. For questions about the FTC's proposed rulemaking or non-competition agreements, please contact any member of **JAH's employment attorneys** or complete our **General Contact Form**.

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