

FTC Expected To Issue Final Rule Banning Many Noncompetes on April 23

Skadden

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If you have any questions regarding the matters discussed in this memorandum, please contact the attorneys listed on the next page or call your regular Skadden contact.

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On April 16, 2024, Federal Trade Commission (FTC) Chair Lina M. Khan announced that a special open commission meeting will be held virtually on Tuesday, April 23, 2024, at 2:00 p.m. Eastern Daylight Time, where the FTC is expected to disclose and vote on whether to issue a final rule that would ban the use of noncompete clauses in many circumstances. The open session and vote on the final rule come over a year after the FTC first announced its proposed noncompete ban.

The final rule that the FTC is expected to approve at the session has been revised following the receipt of more than 26,000 comments and modifies the [Notice of Proposed Rulemaking](#) released January 5, 2023, although the revisions and modifications to the proposed rule have not yet been disclosed.

The proposed rule was a far-reaching departure from historical federal precedent, and would have prohibited employers from entering into noncompete clauses with workers, and required employers to rescind existing noncompete clauses and actively inform their current and former workers that existing noncompete clauses are no longer in effect.

As proposed, the rule also would have prohibited contract terms that amount to “de facto” noncompete clauses, but would have provided a narrow “sale of business” exception to the prohibition if the worker subject to the clause is at least a 25% owner, member or partner in the applicable business entity at the time the worker enters into the noncompete. The proposed rule provided that any final rule would require full compliance 180 days after publication of the final rule in the Federal Register.

The FTC will not be taking comments from the public during the special open session, but the session will be made publicly available via live webcast and recorded for subsequent viewing on [FTC.gov](#).

For additional information and analysis about the proposed rulemaking, see our January 9, 2023, client alert “[FTC Proposes Broad Ban on Worker Noncompete Clauses](#).”

At this time, employers are not required to change their restrictive covenant practices based on the proposed rule but should be prepared to develop compliance plans following the adoption of the final rule. We will continue to monitor new developments as they occur next week and provide updates with relevant information and deadlines.

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