

# advisory

## THE U.S. FEDERAL TRADE COMMISSION (“FTC”) BANS VIRTUALLY ALL NONCOMPETITION AGREEMENTS



In the last few years noncompetition agreements (“NCAs”) have been under attack in an increasing number of state legislatures. On April 23, 2024, the FTC seems to have put the issue to rest by issuing a nationwide ban on NCAs. The ban becomes effective 120 days after publication in the Federal Register.

The FTC Chair was quoted as saying that noncompetes “... keep wages low, suppress new ideas and rob the US economy of dynamism ...” The FTC estimates that the ban will result in the formation of more than 8,500 new businesses each year and the filing of more than 17,000 new patents application for each of the next 10 years. It also estimates that the ban will lower healthcare costs by up to \$194 billion over the next 10 years.

Under the new FTC rule, the vast majority of existing noncompetes will become unenforceable when the rule takes effect. One exception is that existing NCAs for

senior executives may remain in place, but employers are not permitted to enter into or enforce any new NCAs, even for senior executives. The term “senior executive” is defined as a person making more than \$151,164 per year and who serves in a policy making position with the employer.

Companies also are required to notify employees (excluding senior executives) that their employers will no longer be enforcing NCAs against them. To facilitate the notification process, the final rule provides sample language for use by employers.

The new rule is based in part on a finding that a noncompete is an unfair method of competition. As such, it is a violation of the Federal Trade Commission Act.

### Permissible Alternatives

The FTC acknowledged that employers still have a legitimate need to protect the investments in their businesses. Therefore, nondisclosure agreements and trade secret laws remain in effect and can provide employers with meaningful remedies, including specific performance, without the need to enforce NCAs.

If you have any questions or would like further information, please contact your regular PLDO attorney or Partner William F. Miller of our Corporate and Business Practice at 508-420-7159 or [wmiller@pdlolaw.com](mailto:wmiller@pdlolaw.com).

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