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Isaac M. O'Bannon • Apr. 23, 2024



The Federal Trade Commission has [issued a final rule](#) it says will promote competition by banning non-compete agreements nationwide, “protecting the fundamental freedom of workers to change jobs, increasing innovation, and fostering new business formation.”

The FTC estimates that the final rule banning non-competes will lead to new business formation growing by 2.7% per year, resulting in more than 8,500 additional new businesses created each year. The final rule is expected to result in higher earnings for workers, with estimated earnings increasing for the average

worker by an additional \$524 per year, and it is expected to lower health care costs by

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In response, the global tax firm Ryan filed a lawsuit against the agency in a Texas federal court the same day, challenging the rule on the basis that it, "... imposes an extraordinary burden on businesses seeking to protect their intellectual property (IP) and retain top talent within the professional services industries. The firm seeks to prevent the immense, undue burdens the FTC's rule would impose on service-driven companies of every size nationwide."

According to the FTC, non-compete agreements are a widespread and often exploitative practice imposing contractual conditions that prevent workers from taking a new job or starting a new business. Non-competes often force workers to either stay in a job they want to leave or bear other significant harms and costs, such as being forced to switch to a lower-paying field, being forced to relocate, being forced to leave the workforce altogether, or being forced to defend against expensive litigation. An estimated 30 million workers—nearly one in five Americans—are subject to a non-compete.

Under the new rule, existing non-compete agreements for the vast majority of workers will no longer be enforceable after the rule's effective date. Existing non-competes for senior executives, "who represent less than 0.75% of workers," can remain in force under the FTC's final rule, but employers are banned from entering into or attempting to enforce any new non-competes, **even if they involve senior executives** [emphasis added editorially]. Employers will be required to provide notice to workers other than senior executives who are bound by an existing non-compete that they will not be enforcing any non-competes against them.

In the final rule, the Commission has determined that it is an unfair method of competition, and therefore a violation of Section 5 of the FTC Act, for employers to enter into non-competes with workers and to enforce certain non-competes.

“Upending a long history of evaluating non-compete agreements through case-by-

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