

FTC's Ban on Non-Competes

On Tuesday, the Federal Trade Commission published its long-anticipated, final rule seeking to ban non-compete agreements in the United States. The FTC claims non-competes violate Section 5 of the FTC Act, which makes “unfair methods of competition in or affecting commerce ... unlawful.”

Under the new rule, it is unlawful for any person to have a contract or a condition of employment with a worker that prohibits, penalizes or functions to prevent the worker from seeking or accepting work with a different person or operating a competing business.

The rule applies to independent contractors and to senior executives with one caveat: existing non-competes with senior executives can be enforced, but no *new* non-competes can be created.

The rule still allows the use of non-disclosure agreements and non-solicitation agreements, provided they are not so broad as to effectively prohibit the ability to compete. And non-competes given by a seller of a business to a buyer remain enforceable.

The rule will take effect in 120 days. Prior to that time, the rule requires employers to provide written notice via mail, email or text that existing non-competes will not be enforced.

The U.S. Chamber of Commerce and other industry organizations promise a legal challenge to the rule, and one might expect that a court will issue an injunction to delay implementation of the rule while the court sorts through the legal arguments.

A big thanks to Dirk Beamer, our attorney from Wright Beamer for the information for this eblast. Dirk will be speaking at our National Convention which will be held at the Golden Nugget 8/20-8/21. Save the dates now so that you can join us and get the latest updates. More information to follow in our next Voice.

We hope to see you in August! Feel free to reach out to us if you need anything prior to that.

Sincerely,

UFAA Board of Directors

Mary Gruenberg, President, mgruenberg@ufaa.com

Dennis Long, Secretary, dlong@ufaa.com

Mike Lillo, Treasurer, mlillo@ufaa.com

David Blanding, Director of Membership, dblanding@ufaa.com

Jeff Felger, Director of Legal Activities, jfelger@ufaa.com