



ALERTS

Is This The End Of Non-Competes? Hospitals, Physicians, Pharmaceutical And Medical Device Manufacturers Need To Know

January 9, 2023

Highlights

The FTC has proposed a new federal rule that would ban all non-compete clauses, except for in a few limited exceptions when selling a business, and require companies to rescind any existing non-compete agreements at the time of the rule's effective compliance date

The rule would apply to all businesses and professions, including healthcare providers such as hospitals and pharmaceutical and medical supply companies. Healthcare is an industry that has relied heavily on non-compete agreements, and should the proposed rule be finalized, it would have a significant impact for physicians and those companies that employ physicians

The proposed rule will soon be published in the Federal Register, triggering a 60-day public comment period. Once a final rule is published, it will become effective 60 days after publication, and compliance is mandatory 180 days after publication

As discussed in more detail [here](#), the Federal Trade Commission (FTC)

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proposed a new federal rule that would ban all non-compete clauses, except for in a few limited exceptions when selling a business. The proposed rule would also require companies to rescind any existing non-compete agreements at the time of the rule's effective compliance date. The new proposed rule is broad and would apply to all businesses and professions, including healthcare providers such as hospitals and pharmaceutical and medical supply companies. Healthcare is an industry that has relied heavily on non-compete agreements, especially in hospitals and medical group practices. It is very common for physicians to be bound by non-compete clauses in employment agreements. Should the proposed rule be finalized, it would have a significant impact for physicians and those companies that employ physicians.

The proposed rule is very broad and prohibits non-compete agreements not just for employees but also for independent contractors, interns and sole proprietors. The proposed federal rule would preempt any state laws that permit non-compete agreements.

Next Steps and Key Deadlines

The FTC will soon publish the proposed rule in the Federal Register, which will trigger a 60-day public comment period. Any individual, business or trade organization can submit comments to the FTC regarding the proposed rule, including potential effects of the proposed rule. Barnes & Thornburg can assist businesses in preparing a public comment so your voice can be heard. Once the comment periods end, the FTC will review all comments and publish a final rule. The final rule can, and typically does, vary from the original proposed rule, based on the FTC's review of the public comments. Once a final rule is published, it will become effective 60 days after publication, and compliance is mandatory 180 days after publication.

To obtain more information, please contact the Barnes & Thornburg attorney with whom you work with or Stacy Cook at SCook@btlaw.com, Jason Schultz at Jason.Schultz@btlaw.com, Heather Delgado at heather.delgado@btlaw.com, Laura Seng at Laura.Seng@btlaw.com and Brient Hicks at Brient.Hicks@btlaw.com.

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