

## Employment Non-Compete Agreements: Are They Still Permitted in Light of President Biden's Executive Order on Promoting Competition in the American Economy?

Employment Law / August 17, 2021

Yes, for the time being; there are no immediate changes to the law governing employment non-compete agreements.

### ***The Executive Order***

On July 9, 2021, The White House issued a 20-page, 72-initiative **Executive Order**, signed by President Biden. The overarching purpose of the Order is to create an “open and competitive economy” that allows businesses to have more choices among suppliers and buyers, and workers to have the “economic freedom to switch jobs or negotiate higher wages.” Naturally, the latter purpose has raised the question as to whether, in light of the Order, non-compete agreements (in the employment context) are still allowed. The answer is “yes,” employment non-compete agreements are still permitted.

While the Executive Order aims to promote greater competition in the American economy, including businesses and the labor market, the Order does not expressly forbid non-compete agreements. Rather, it encourages (not requires) the Federal Trade Commission (FTC) to “curtail the unfair use of non-compete clauses and other clauses or agreements that may unfairly limit worker mobility.”

### ***So what does this mean?***

Non-compete agreements remain subject to state-specific oversight and enforcement rules. The FTC, however, through the use of its statutory rulemaking authority, could propose a federal rule banning the use of non-compete agreements and/or impose limits on the duration and scope of such clauses. But that process could take a while or possibly never happen at all. Indeed, creating a federal-level rule for employment non-compete agreements would be a significant shift from the traditional regulation of employment non-competes, which is done at the state level.

If you have any non-compete-related questions, please contact any member of the **KRCL Labor & Employment Practice Group**. We are here to help you navigate the laws governing non-compete agreements in your state, and will keep you apprised should any developments arise in this area of law.

### **Related Practices**

---

Labor & Employment