The US Federal Government Bans Non-Compete Agreements Click on the orange words/phrases in this article for links to related articles

- In April 2024, the FTC banned non-compete agreements, allowing employees more freedom to move between jobs without restrictions on disclosing trade secrets.
- Non-compete agreements, meant to protect company interests, had been criticized for trapping low-wage workers in stagnant positions, hindering career growth.
- Despite the ban, exceptions may apply for senior employees with access to sensitive information, depending on their role and salary.
- Alternatives to non-compete agreements include non-disclosure agreements (NDAs), non-solicitation agreements, and offering incentives to retain employees, each serving to protect intellectual property without limiting employee mobility.
- NDAs and non-solicitation agreements can be tailored to specific business needs and are enforceable under law to safeguard against the sharing of sensitive information and client poaching.

In April 2024, the Federal Trade Commission (FTC) issued a ban on non-compete agreements between companies and their employees. Typically, these agreements prevented employees from disclosing trade secrets should they secure a new position at a competitor. Although lawsuits are also piling up to challenge the ruling, some welcome the change, citing that non-competes keep individuals in the community trapped in low-wage jobs, never having the opportunity to progress in their industry. To safeguard companies against loss of intellectual property and trade secrets, there are a multitude of alternatives to a non-compete agreement.

What is the Non-Compete Agreement?

It's a legally binding contract also known as a "covenant not to compete" and "noncompetition" agreement that's signed by an employee before starting their job. Designed to protect the company, the contract prevents the employee from working at the competition for a set period of time.

The agreement negatively impacted low-wage workers, stifling their career growth path, and ultimately creating further problems for those eager for career advancement.

With FTC's ruling, it means that these agreements are no longer applicable. However, the ruling may still stand if it's applied for individuals who are senior within their company and have access to sensitive data. The FTC makes their decision based on an individual's annual compensation and role in making company decisions.

What are the Alternatives to Non-Compete Agreements?

Are you wanting to protect intellectual property, client databases, proprietary information, systems, financial forecasts and other trade secrets? Even without non-compete agreements, you can still protect all of this— you just have to do it differently. Depending on the type and size of your company, you could consider one of the below alternatives.

Non-disclosure agreements
When creating an NDA, you need to be specific about the information that is not allowed to be disclosed. NDAs can be designed to suit your specific business needs. For example, if you are an event company that books hotels for celebrities, your NDA might be that employees cannot mention the celebs name or hotels. NDAs can also be used to prevent ex-employees from talking about sensitive company information.

Non-solicitation agreements
Also known as a non-interference agreement, a non-solicitation agreement can be used for individuals and businesses. This kind of contract prevents the individual/company from stealing clients and poaching staff after they've left the company. To be enforceable, it's important that specific activities are listed in your agreement. If an individual doesn't abide for the established timeframe, or if there is a breach of contract, there could be a lawsuit.

Incentives to stay
There are a variety of reasons employees may want to go elsewhere. Employers can get ahead of this itch with incentives that go beyond salary increases. In the age of remote working, many employees are looking for flexible work hours and hybrid work settings. Health incentives such as healthy food options on-site or an exercise stipend, show workers that you prioritize wellness. Some companies have even moved to unlimited paid time off. A big incentive would also be to offer stock options, after an employee has been with the company for a few years. All of these incentives are a more positive solution to retaining employees through NDAs.

Confidentiality clauses
These clauses can be worked into almost any employee contract. Clauses would need to be company specific and can range from financial information to client details and media. Working with a legal adviser can ensure you cover your bases, and you can also find confidentiality agreement tips and templates to get your started.

The Takeaway

Alternative solutions to traditional non-compete agreements can safeguard your company's interests without stifling the career growth of your former employees. By opting for these options, you not only protect your business but also support your former employees in advancing their careers and contributing positively to their community. This approach fosters a healthier, more collaborative relationship between employers and their former staff, promoting mutual growth and community development.

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