

Biden Administration targets competition



Timothy J. Lowe, James J. Boutrous II, Miriam L. Rosen | Friday, July 9, 2021

This article is part of a new [McDonald Hopkins series on developments in restrictive covenant law](#) that will dive deeper into how employers can protect their business interests in light of state - and potentially federal - limitations, strategies for revising employers' non-compete and non-solicitation agreements, and other topics that will help businesses navigate the changing landscape of employee restrictive covenants.

The march to limit an employer's ability to protect its confidential information and client relationships is back at the federal level today as President Joe Biden is signing a broad [Executive Order](#) that specifically targets competition policy. In recent years, states across the country have passed or amended laws to limit the use of non-compete agreements. At the federal level, the U.S. Federal Trade Commission (FTC) has dealt with ever-increasing pressure from politicians, unions, and advocacy groups to ban non-compete clauses.

The Order, which has not been published as of this posting, purportedly seeks to increase competition in the labor market and help raise wages by making it easier for employees to change jobs. The Order will encourage the leading antitrust agencies, the Department of Justice (DOJ) and FTC, to enforce antitrust laws vigorously and encourages the FTC to ban or limit non-compete agreements, while encouraging both the FTC and DOJ to strengthen antitrust guidance to prevent employers from collaborating to suppress wages or reduce benefits by sharing wage and benefit information with one another.

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The Order is the most concerted effort in recent times to use the power of the federal government to tilt the playing field toward workers, but its enforcement hinges on the ability of regulators to carry out the rules the White House seeks and to write them in ways that will survive inevitable legal challenges. Legislation involving non-compete clauses has historically been passed at the state level, leaving a limited federal role.

It is as critical as ever for companies to remain on alert and develop pro-active strategies to protect themselves against unfair competition. If you have concerns about your organization's non-compete agreements, contact any member of the non-compete and unfair competition team. As always, we will continue to monitor and report on new developments.

Stay tuned for a more detailed update and analysis once the Order is published.



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