Engage PEO Client Alert

FTC Bans Non-Compete Agreements

WHAT'S NEW: On April 23, 2024, the Federal Trade Commission voted to ban non-compete agreements with limited exceptions. The rule is set to go into effect on August 21, 2024.

WHAT IT MEANS: The new rule will impact many businesses and employees. Effective August 21, 2024, Employers may not:

- Include non-competes in *any* new employment contracts (including those for senior executives), and
- Enforce any existing non-compete (other than those for senior executives).

Senior executive is generally defined as an employee "earning more than $151,164 annually who are in a policy-making position." Employers may still use confidentiality agreements to prohibit employees from revealing confidential business information or trade secrets. The rule also requires employers to notify all employees with existing non-compete agreements that those agreements are no longer enforceable.

WHAT EMPLOYERS SHOULD DO: Employers who utilize non-compete agreements should do the following before the new rule takes effect:

1. Review all existing non-compete agreements.
2. If the employer's non-compete agreement contains a confidentiality clause or non-disclosure provision, make sure the non-compete agreement also includes a severability clause (allowing the NDA to stand on its own even if the non-compete agreement is null and void).
3. If the non-compete agreement does not contain a severability clause, employers should consider separate confidentiality or non-disclosure agreements to protect the employer, if appropriate.
4. When onboarding new employees, employers should not enter into non-compete agreements.
5. For all employees with existing non-compete agreements, employers must notify those employees that the agreement is no longer enforceable.

Please reach out to your Engage Human Resources Consultant if you have any questions concerning this alert or other H.R.-related matters.