

Spring, 2024

**FTC ISSUES NATIONAL NON-COMPETE BAN BUT ULTIMATE
ENFORCEABILITY IN QUESTION**

On April 23, 2024, the Federal Trade Commission approved a final regulation banning almost all non-compete agreements prospectively, while permitting the grandfathering of preexisting non-compete agreements for senior executives (i.e. employees in a policy-making position and earning at least \$151,164 per year). There are certain limited exceptions, including non-compete agreements entered into in connection with the sale of a business. The regulation will become effective on September 4, 2024 and requires employers by that date to have given a notice to employees subject to non-compete agreements that those agreements cannot and will not be enforceable.

However, there are a multitude of court challenges to the regulation which have already been filed, including one in which the United States Chamber of Commerce is a major participant. These challenges raise a number of objections to the regulation, including the lack of the FTC's jurisdiction in this area, the primacy of state laws as opposed to a national policy, the usurping of Congressional authority, etc. The plaintiffs in the various actions are seeking to have the courts issue a nationwide injunction preventing the implementation of the regulation while the cases wind their way through the trial and appellate courts, which could take several years. A majority of the attorneys with expertise in this area expect at least one of these requests for an injunction to be successful and the regulation not become effective in September, if ever.

We will continue to monitor this situation and advise you as to any updates. Please contact Joshua S. Levine, Esq. of the firm with any questions you may have.

Contact:
Joshua S. Levine, Esq.
jlevine@dmlawyers.com
914.948.1556 ext. 8003