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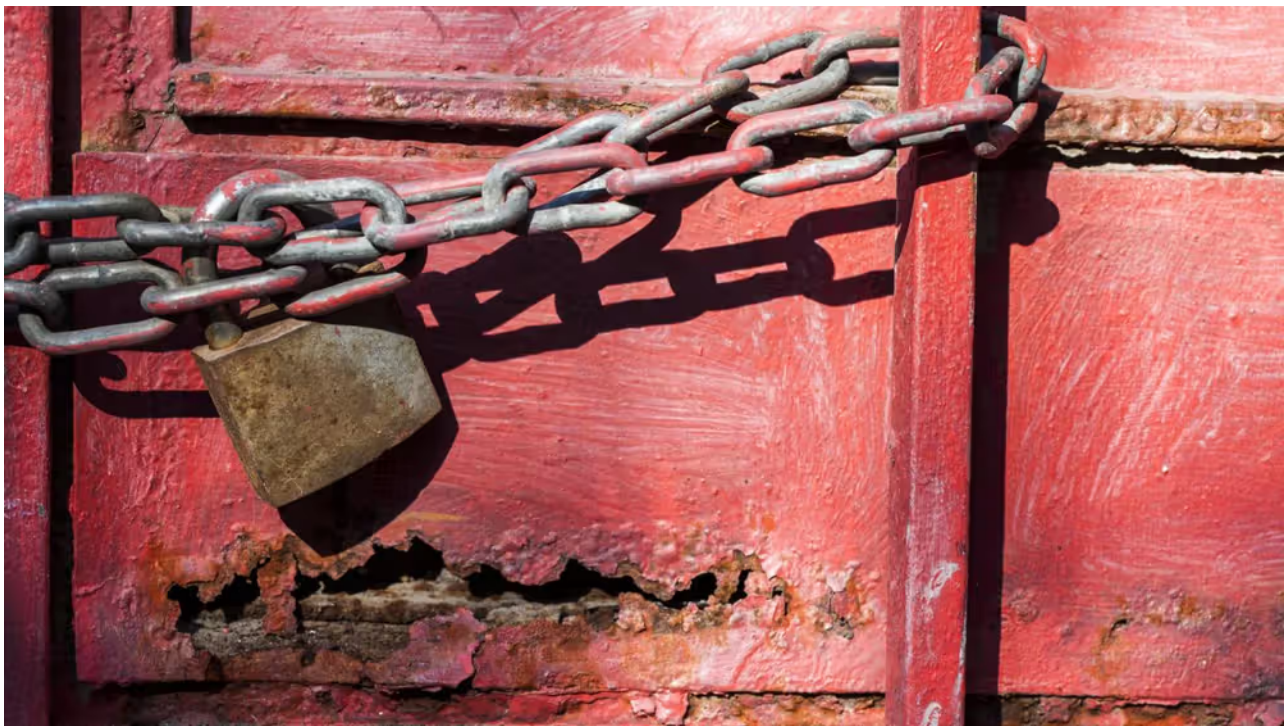
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SPOTLIGHT

Hotly contested proposal takes aim at non-compete laws

In January, the Federal Trade Commission announced a proposed regulation that would ban non-competes across the country. While there is support from many employees and labor organizations, business groups across the country have expressed opposition. This article explores why the FTC is seeking to ban non-competes and what it means for businesses.

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The first case involving a non-compete clause [dates back more than 600 years](#), and they have been hotly debated ever since. A few states, including California, have banned non-competes since the 1800s. In recent years, opposition to non-compete agreements has continued to grow. In January, the Federal Trade Commission (FTC) announced a [proposed rule that would ban non-compete agreements](#) across the country, relying on a new interpretation of a statute that is more than 100 years old. In addition, the FTC already has taken enforcement action against certain businesses it believes to have misused non-competes. If this proposed rule takes effect, the impact on businesses and employees in the Triangle could be great.

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For businesses, if the law goes into effect, it would ban the use of non-compete agreements for all employees and independent contractors. However, this would not apply just to future agreements. Any existing non-compete agreement or clause would be rescinded, and employers would be responsible for notifying both current and former employees of this change.

In May, the National Labor Relations Board (NLRB) asserted for the first time that [non-competes are unlawful and impermissibly limit the rights of employees](#). The reasoning is that non-competes could limit an employee's ability to quit or change their jobs. The NLRB also believes non-competes hinder an employee's ability to join labor unions and collectively bargain with employers.

Still, there are many reasons why employers seek the protection of non-competes with employees and contractors. These reasons include "protecting a company's relationships and goodwill with its customers and preventing disclosure of proprietary information and trade secrets," said Isaac Linnartz, an attorney at Smith Anderson who co-leads the firm's Non-Compete and Trade Secrets practice. "Of course, employers sometimes overreach and have non-competes with categories of workers who don't really fit that bill. For example, a lot of the opposition to non-competes focuses on low-wage or medium-wage workers who don't have significant customer relationships or access to confidential information or trade secrets." A non-compete ban like the FTC has proposed would force employers to look elsewhere to protect their interests. "If there were a ban on non-competes, I think you would see employers shift even more towards using confidentiality and non-disclosure agreements with their employees," said Linnartz. "Employers also would likely rely on federal and state statutes prohibiting misappropriation and use of trade secrets and other intellectual property," Linnartz added.

The topic and proposal is especially of importance for businesses in the Triangle, with its focus on technology, research, and innovation. From medicines to manufacturing, the Raleigh-Durham area has become a beacon for innovative thinking and creative solutions.

Therefore, despite the fierce support coming from the NLRB and FTC, many business groups, including those with ties to the Triangle, have joined the Chamber of Commerce [in opposition to the proposed ban on non-competes](#). One major complaint is, as is, the proposed rule goes too far and, in addition to addressing legitimate concerns about overbreadth, prohibits restrictions that are entirely appropriate. For example, opponents believe the law should be narrowed to allow non-competes for employees who have access to sensitive information, like detailed customer information and trade secrets.

During the comment period earlier this year, the FTC received more than 26,000 comments regarding the proposed regulation, which it will consider before moving forward with a final rule. According to Bloomberg Law, [a vote could be held sometime during the first half of 2024](#), and if passed, the rule would go into effect 180 days later. However, this will

continue to be an evolving topic as the FTC could make changes to the proposed law before a vote, and any rule is likely to be challenged immediately in court.

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