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## **FTC Finalizes Rule on Noncompete Agreements: Implications for ICCFA Members**

**STERLING, VA (April 24, 2024)** – On April 23, the United States Federal Trade Commission finalized a widely anticipated rule governing the use of noncompete agreements in the workplace. The final rule bans new noncompetes with all workers, including senior executives, after the effective date (120 days from publication in the Federal Register). The final rule varies from the proposed rule in two instances where ICCFA urged the FTC to reconsider its proposal's impacts on deathcare businesses, specifically and businesses in general.

In the proposed rule, the Commission suggested an exception for certain noncompetes between the seller and the buyer of a business that applied only to a substantial owner, member, or partner, defined as an owner, member, or partner with at least 25% ownership interest in the business entity being sold. Based on comments, including comments submitted by the ICCFA, the Commission adopted a final rule that provides an exception for the bona fide sale of a business without requiring that the seller have at least a 25% ownership interest, ultimately allowing noncompetes in the sale of a business.

ICCFA was also concerned about the retroactive nature of the proposed rule, which would not only ban all noncompete agreements once finalized but also void any noncompete agreements already in effect. For existing noncompetes, the final rule adopts a different approach for senior executives than other workers. For senior executives, existing noncompetes can remain in force. Existing noncompetes with workers other than senior executives are not enforceable after the final rule's effective date – set for 120 days after the final rule is published in the Federal Register, roughly Labor Day 2024.

While the FTC made some concessions based on feedback, business groups are preparing to challenge the rule in the courts, which will likely delay implementation. The newly appointed commissioners, Melissa Holyoak and Andrew Ferguson dissented and voted against the final noncompete rule, echoing their belief that the FTC lacked the authority to promulgate the rule and other objections. Their dissent laid the groundwork for not only a possible court challenge but it is also possible that lawmakers in Congress will view the rule as going too far and seek to address it via legislation. ICCFA will continue to monitor and share all updates as they are released.

Most businesses will wait to see if any of these challenges or delays occur. Once there is a final determination on the future of the new rule, then companies will have to move forward accordingly. As a business, monitoring and waiting for clarification before acting is best. Also, since the new noncompete rule does not control non-solicitation, it may be an excellent time to see if a non-solicitation will work for your business.

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