What you need to know about the FTC’s banning of noncompete agreements

What is a noncompete agreement?
Noncompete agreements can take many forms, but typically they are part of a written employment agreement that restricts an employee who leaves a job from working in that field for a specific time period in a certain geographic area.

Here’s an example of how it could look for an employee:
An associate veterinarian at an animal hospital may have a noncompete provision in her employment contract indicating that once employment ends with that practice, she agrees not to work at another veterinary practice for a specific amount of time within a specified area around the practice. Since violating the provision could subject her to damages for breaching the agreement, she feels compelled to stay with the current employer instead of leaving to practice at a nearby hospital.

Here’s an example of how it could look for an employer:
A veterinary practice owner invests money and time building relationships and goodwill with clients, and training new employees. Noncompete agreements have historically been incorporated into employment contracts with associate veterinarians to prevent them from leaving a practice for a nearby location and taking clients with them.
What action did the Federal Trade Commission (FTC) take regarding noncompete agreements?

On April 23, 2024, the FTC voted to issue a rule banning the use of most noncompete agreements nationwide. Under this rule, for-profit employers would be banned from entering into, or attempting to enforce, any new noncompete agreements with all employees (including independent contractors) beginning on the effective date (September 4, 2024). Existing noncompete agreements for most workers would no longer be enforceable except for senior executives (those with over $151,164 annual compensation and in a policy-making position). In addition, the rule creates an exception for noncompete agreements made as part of a bona fide sale of a business.

When will the rule take effect?

It’s important to note that the FTC noncompete rule did not take effect immediately. The final rule is scheduled to become effective 120 days after being published in the Federal Register, which occurred on May 7, 2024. Pending delays or other action resulting from current litigation (see below), the final rule is scheduled to go into effect on September 4, 2024.

Will the ban happen for sure?

No, not necessarily. The U.S. Chamber of Commerce and several other business groups have sued the FTC in an attempt to block the rule. The groups allege, among other claims, that the FTC lacks the legal authority to adopt such a rule impacting a significant portion of the American economy and that doing so would undermine American businesses’ ability to remain competitive.

These business groups are asking the court to vacate, or block, the noncompete rule from taking effect in its entirety and prohibit the FTC from enforcing the rule. While the litigation is pending, the business groups have asked the court to stay, or delay, the effective date of the rule, which would prevent the rule from taking effect while the litigation is pending. The court is expected to rule on the request to stay the effective date of the rule by July 3, 2024.

Regardless of how the court ultimately rules on the request to vacate the noncompete rule, there will likely be appeals from that decision that could take much longer to resolve. Therefore, the ultimate fate of the noncompete rule may not be known for some time.

How does the FTC rule impact current noncompete agreements?

Since the rule hasn’t yet taken effect, there is no change to existing noncompete agreements. Whether you’re an employer or an employee, the rule has no immediate impact on current agreements.

What to do if you’re an employer:

1. Even though the rule isn’t in effect yet, it’s a good idea to start reviewing contracts (of both existing employees and new hires) to become familiar with who is covered by a noncompete agreement and the terms of those agreements.
2. Stay informed. Monitor the progress and developments of the litigation through trusted resources, like the AVMA.
3. It is always good to plan, but don’t make drastic changes based on the FTC rule until the final outcome is known.

What to do if you’re an employee:

1. Since the rule hasn’t yet taken effect, any existing noncompete agreement you have with an employer may still be valid and enforceable. Meaning, if you’re under a noncompete and you quit your job, you may be required to follow the terms of the agreement.
2. Stay informed. Monitor the progress and developments of the litigation through trusted resources, like the AVMA.
3. It is always good to plan, but don’t make drastic changes based on the FTC rule until the final outcome is known.