

## **Noncompete Clause Rule: A Guide for Businesses and Small Entity Compliance Guide**

The Federal Trade Commission's [Noncompete Clause Rule](#) bans all new noncompete clauses—you cannot enter into new noncompetes with any workers after the Rule goes into effect. Any existing noncompetes with workers, except noncompetes with senior executives, are unenforceable as of the Rule's effective date. You cannot enforce an existing noncompete against such a worker or represent to such a worker that they are covered by an enforceable noncompete. You must notify these workers that their noncompetes are unenforceable.

This publication serves as a small entity compliance guide under the Small Business Regulatory Enforcement Fairness Act. Your best source of information is the text of the [Noncompete Clause Rule](#) itself. You can also find more information about the Rule on the [Noncompete Clause Rule page](#). You can contact the FTC at [noncompete@ftc.gov](mailto:noncompete@ftc.gov) with questions or comments about the Rule. This document represents the views of FTC staff and is not binding on the Commission.

Here's what your business needs to know to comply.

### **3 Steps to Complying with the Noncompete Clause Rule**

#### **Step 1: Don't include noncompetes in future employment contracts, paperwork, or websites**

This applies to all workers, including senior executives. "Paperwork" includes employee handbooks and workplace policies.

#### **Step 2: If you have active noncompetes, give notice to those current and former workers who are not senior executives that their noncompetes are unenforceable**

Model language for the notice can be found on the [Noncompete Clause Rule page](#). If you prefer, you can write your own notice. You can deliver notice by email or text message, or deliver a paper notice by hand or mail. If you don't have any contact information for a former worker, you don't have to send the notice.

\*Notice is not required for senior executives because their existing noncompetes are not affected by the Rule. As part of this step, consider whether any of your workers with active noncompetes are senior executives.

#### **Step 3: Don't enforce existing noncompetes going forward for workers other than senior executives**

For workers other than senior executives, don't enforce a noncompete in court or threaten workers or former workers with enforcement. You can still enforce an existing noncompete with a senior executive. You can also still enforce a claim that a noncompete was breached before the Rule's effective date.

### **FAQs**

1. When is the effective date?

The Rule takes effect 120 days after it is published in the Federal Register, likely in early September. We will update this guide with the exact date once it is available.

2. Which workers are covered by the Rule?

The Rule applies to noncompetes with all workers, whether full-time or part-time, including employees, independent contractors, interns, externs, volunteers, apprentices, and others—but there are different requirements for senior executives as defined by the Rule (see Questions 5-6).

3. Which businesses are covered by the Rule?

The Rule covers all types of businesses in nearly all industries. Some employers are outside the FTC's jurisdiction and therefore not subject to the Rule. This includes banks, savings and loan institutions, federal credit unions, common carriers, air carriers, and certain non-profits.

4. What is a noncompete?

A noncompete clause is a term or condition, often in an employment contract, that prohibits, penalizes, or functionally prevents a worker from getting a different job or starting a business after leaving their employment. Here's what that covers:

- Prohibits: Terms and conditions expressly saying that a worker can't get another job, such as with a competitor, or start a business.
- Penalizes: Terms and conditions that require a worker to pay a penalty if they get another job or start a business.
- Functionally prevents: Terms and conditions that aren't labeled as noncompetes but are so restrictive that they effectively prevent a worker from getting a new job or starting a business.

5. Is there something different about how noncompetes with senior executives are treated under the Rule?

Yes. After the effective date, you can't enter into a new noncompete with any worker covered by the Rule—that includes senior executives. However, an *existing* noncompete with a senior executive is still valid. In contrast, for workers other than senior executives, you cannot enforce existing noncompetes after the effective date and you must give these workers notice that their noncompetes will not be enforced.

6. How is senior executive defined?

A worker is a senior executive if they earn more than \$151,164 in compensation a year and are in a "policy-making position." Compensation can include salary, commissions, performance bonuses and any other compensation agreed to that the worker knows and can expect, but does not include items like benefits or board and lodging. If the worker worked only for part of the year, you can annualize their earned compensation to see if they meet the threshold. Policy-

making position includes the president, CEO, or someone else with authority to make policy decisions for the entire company.

7. Do I need a lawyer to comply with the Rule?

No. You can always consult a lawyer if you want to, but the 3 steps to comply are all most businesses must do to comply with this Rule.

8. What if I don't use noncompetes?

You don't need to take any steps to comply with this Rule. Just make sure you don't use noncompetes in the future.

9. Can I send an all-staff email using the model language and meet the notice requirement for my current workers?

Yes, an all-staff email with the model language meets the requirement. You can send an all-staff email even if you use noncompetes only for some workers.

10. Is the model language available in any languages other than English?

Yes. The model language has a link to translated versions in Spanish, Arabic, Tagalog, Simplified Chinese, Vietnamese, and Korean. You can include any of those translated versions alongside the English version.

11. Can I hire a worker who had a noncompete in their prior job?

Yes, if the prior noncompete is covered by the Rule. Unless the worker was a senior executive, the prior noncompete is no longer enforceable after the Rule's effective date.

12. Does the Rule apply to noncompetes between businesses?

The Rule only applies to noncompetes between businesses and workers. For example, the Rule does not apply to noncompetes in franchisor/franchisee contracts, but it does apply to noncompetes between employers and workers at franchises. However, those other noncompetes, including between businesses, would still be subject to other antitrust laws.

13. What if I'm selling my business?

The Rule doesn't apply to noncompetes between a buyer and seller of a business (or potentially the seller's share of a business). The seller can agree to a noncompete individually, but not for any of the business's workers. The Rule prohibits noncompetes for workers, including in a sale of business context.

14. What if I know of another company enforcing noncompetes? Can I report them to the FTC?

Yes, you can help the FTC ensure that everyone complies with the Rule and protect fair competition by reporting any non-complying businesses with an email to [noncompete@ftc.gov](mailto:noncompete@ftc.gov).

15. Are there any recordkeeping or reporting requirements?

No. All you need to do once you send the notice is make sure that you don't enter into or enforce noncompetes going forward.

### **Your Opportunity To Comment**

The National Small Business Ombudsman and 10 Regional Fairness Boards collect comments from small businesses about federal compliance and enforcement activities. Each year, the Ombudsman evaluates the conduct of these activities and rates each agency's responsiveness to small businesses. Small businesses can comment to the Ombudsman without fear of reprisal. To comment, call toll-free 1-888-REGFAIR (1-888-734-3247) or go to [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman).