Federal Trade Commission Proposes Ban on Non-Compete Clauses



January 31, 2023

On January 5, 2023, the Federal Trade Commission (FTC) proposed a new rule that would ban employers from imposing non-compete clauses on workers. Specifically, the new rule would make it illegal for employers to enter into or attempt to enter into a non-compete clause with a worker, maintain a non-compete clause with a worker, or represent to a worker that the worker is subject to an enforceable non-compete clause. In addition, the new rule would require employers to rescind existing non-compete clauses and inform workers that such non-compete clauses are no longer in effect. The compliance date for the rescission of existing non-compete clauses is proposed to be 180 days after the publication of the final rule. The proposed rule covers both traditional non-compete clauses as well as "de facto" non-competes which have the effect of prohibiting a worker from seeking or accepting employment with a person or operating a business after the conclusion of the worker's employment with the employer.

Clearly, if this rule is adopted in its current form, it would have significant consequences regarding physician employment agreements. We expect that this rule may very well undergo substantial changes and revisions prior to adoption. The FTC invites the public to submit comments on the proposed rule through March 10, 2023. The FTC will review the comments and may make changes, in a final rule, based on the comments and the FTC's further analysis of the issue.

For more information, contact:
John D. Fanburg, Chair | 973.403.3107 | jfanburg@bracheichler.com
Edward Hilzenrath | 973.403.3114 | ehilzenrath@bracheichler.com
Emily J. Harris | 973.364.5205 | eharris@bracheichler.com