

Publications

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FTC Ratchets Up Scrutiny of Non-Competes in Health Care

This week FTC Chairman Andrew N. Ferguson began sending out warning letters to some health care employers advising them to review their employment contracts closely to ensure that they are not overly or unnecessarily broad in restricting the ability of physicians, nurses and other health care workers to take jobs with competitors. The letters appear to have followed a template that the FTC made available on its website, and note that, although narrowly tailored non-competes can serve a legitimate purpose under appropriate circumstances, the FTC is concerned that unreasonable restrictions on the employment of health care workers are having harmful effects on patients' access to care, particularly in rural areas where access to care is already a problem. The FTC did not publicly disclose which employers received these warning letters, but the template letter suggests that these warnings should be observed by all health care employers.

Noncompete agreements can be considered overly broad or unnecessarily aggressive if they last too long after a worker's employment ends, cover an unnecessarily large geographic area or apply to workers in whom the employer did not make any significant investment. The template letter notes that employers often use overly restrictive non-competes without considering whether less restrictive alternatives will still protect their business interests. State law on the enforceability of non-competes can vary a great deal from state to state. But at the Federal level, the FTC's recent trend has been to oppose overly burdensome non-competes. In the template letter, Mr. Ferguson strongly encouraged employers to discontinue unfair or anticompetitive non-competes immediately, and to notify the affected employees of their discontinuance.

If you have any questions about this update, please contact your Polsinelli attorney or a member of our Health Care or Labor and Employment teams.

Related People

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