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## FTC's Proposed Non-Compete Rule: What Texas Lawyers Need to Know

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## Sample Agreement

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During the Restricted Period, in the Restricted Area, Employee will not, directly or indirectly:

1. Use Confidential Information to compete with Employer
2. Solicit any Restricted Customer
3. Recruit any employee of Employer
4. Accept business from any Restricted Customer
5. Seek or accept employment with any company that competes with Employer

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## Overview of Proposed Rule

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- ❖ Prohibits “non-compete clause” with worker. 910.2(a)
- ❖ Narrow definition of “non-compete clause.” 910.1(b)(1)
- ❖ But functional test for “non-compete clause.” 910.1(b)(2)
- ❖ Rescission requirement. 910.2(b)(1)
- ❖ Notice requirement. 910.2(b)(2)
- ❖ Sale of business exception. 910.3
- ❖ No senior executive exception (for now)
- ❖ Supersedes state law. 910.4

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## “Non-compete clause”

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(1) *Non-compete clause* means a contractual term between an employer and a worker that prevents the worker from seeking or accepting employment with a person, or operating a business, after the conclusion of the worker’s employment with the employer.

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## NDA

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- Non-disclosure agreements (NDAs)—also known as “confidentiality agreements”—which prohibit the worker from disclosing or using certain information;

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## Non-solicitation agreement

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- Client or customer non-solicitation agreements, which prohibit the worker from soliciting former clients or customers of the employer (referred to in this NPRM as “non-solicitation agreements”).<sup>34</sup>

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