

CORPORATE COUNSEL: THE FTC BAN

May 9, 2024

1

THE TIMELINE

07/09/2021 – EO 14036

01/05/2023 – NPRM

04/23/2024 – FTC Comm. Vote

04/23/2024 – Ryan suit

04/24/2024 – Chambers suit



BGM
BOULETTE GOLDEN & MARIN

2

THE BASICS

With a Worker, a person cannot

- Enter into or attempt to enter into a non-compete clause
- Enforce or attempt to enforce a non-compete clause
- Represent the worker is subject to a non-compete clause

With a Sr Exec, a person cannot

- Enter into or attempt to enter into a non-compete clause
- Enforce or attempt to enforce a non-compete clause entered into after the Effective Date
- Represent sr. exec is subject to a prohibited non-compete clause



“PERSON”

Person means any natural person, partnership, corporation, association, or other legal entity within the Commission’s jurisdiction, including any person acting under color or authority of State law.

Rule, § 910.1



“CORPORATION”

Corporation shall be deemed to include any company ... or association, incorporated or unincorporated, which is organized to carry on business for its own profit or that of its members. ...

15 U.S.C. § 44



5

“SENIOR EXECUTIVE”

Was in a policy-making position and received from a person for the employment ... total annual compensation of at least \$151,164 in the preceding year [plus provisions addressing partial years]. ...

16 C.F.R. § 910.1



6

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First appeared as part of the conference materials for the
46th Annual Corporate Counsel Institute session
"The Current State of Non-Competes: Are They Still Enforceable?"