

# CORPORATE COUNSEL: THE FTC BAN

May 9, 2024

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## THE TIMELINE

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**07/09/2021 – EO 14036**

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**01/05/2023 – NPRM**

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**04/23/2024 – FTC Comm. Vote**

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**04/23/2024 – Ryan suit**

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**04/24/2024 – Chambers suit**



**BGM**  
BOULETTE GOLDEN & MARIN

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# 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



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# “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



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## **“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



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## **“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



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[eSupplement to the 20th Annual Mergers and Acquisitions Institute](#)

First appeared as part of the conference materials for the  
46<sup>th</sup> Annual Corporate Counsel Institute session

"The Current State of Non-Competes: Are They Still Enforceable?"