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Covenants Not to Compete and the Proposed FTC Ban

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Introduction

- Approximately 30 million employees are subject to noncompete agreements in the United States.
- Noncompetes also commonly used in business transactions
- FTC recently proposed a rule which would ban the use of employee noncompetes in most instances nationwide, rather than deferring to individual states on the issue.
- But don't panic (or get your hopes) up yet...

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What Are Noncompete Provisions?

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Definition

- The United States Federal Trade Commission (“FTC”) defines a noncompete provision as a “contractual term between an employer and worker that prevents the worker from seeking or accepting employment with a person, or operating a business, after the conclusion of the workers’ employment with the employer.”

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Purpose

- Prevents employees from using confidential information, trade secrets, specialized skills, or client relationships learned from an employer to benefit a competitor.
- However, noncompete agreements may not be so limited that it places an undue burden on the employee or inhibits an employee's ability to make a living (subject to state law requirements).

General Requirements for an Enforceable Non-Compete in Texas

- Reasonable Scope
- Reasonable Duration
- Reasonable Geographic or Customer/Facility-Based Restrictions
- Legitimate Business Interest
- Sufficient Consideration

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