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BUSINESS CLIENT ALERT

IMPACT OF JULY 9, 2021 EXECUTIVE ORDER ON NON-COMPETE AGREEMENTS

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On July 9, 2021 President Biden signed an Executive Order entitled “[Executive Order on Promoting Competition in the American Economy](#)” which, among other things, directs the Federal Trade Commission (FTC) to pursue issuing regulations that ban or limit non-compete agreements. The stated goal of these regulations is to “curtail the unfair use of non-compete clauses and other clauses or agreements that may unfairly limit worker mobility.” Historically, the enforceability of non-compete agreements has been a function of state law with some states, like California, enacting legislation banning the use of non-competes and other states, like New Jersey, taking a more targeted approach where their enforceability is contingent on the type of industry along with their geographic and durational scope. Presently, it is unclear whether the FTC will try to propose broad regulations potentially banning non-compete agreements altogether or focus on a more limited issue like the use of non-compete agreements among low wage employers – an issue that has recently come under fire by pro-labor groups. While non-compete agreements are not illegal as a result of President Biden’s Order and any regulations implemented by the FTC will be subject to legal challenge, business owners who rely on non-compete agreements should continue to monitor the development of the FTC regulations and consult with counsel on alternative strategies to protect business interests through confidentiality or non-solicitation provisions that do not rise to the level of a non-compete.

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