


APRIL 20, 2023 | FIRM NEWS

# Conn Maciel Carey Submits Comments to the FTC Urging it to Revise the Proposed Rule Banning Non-Compete Clauses

On April 19, 2023, Conn Maciel Carey LLP's Labor & Employment partners, [Kara Maciel](#) and [Jordan Schwartz](#), [submitted public comments](#) on behalf of a diverse coalition of employers urging the Federal Trade Commission ("FTC") to revise its Proposed Rule banning non-competition clauses. While we believe that the FTC does not have legal authority to promulgate the Proposed Rule in its current form, the coalition's comments focused on three problematic portions of the Proposed Rule and proposed the FTC revise it in three primary respects:

1.  The Proposed Rule's exception in the sale of business context should not be limited to individuals with at least a 25% ownership/partnership interest, but rather should apply to all individuals who are selling a business entity or otherwise disposing of their ownership interest in the business entity.
2. The Proposed Rule should not be retroactive because doing so is inherently unfair to all parties who have lawfully entered into contracts, both in the sale of business and employer/employee contexts and will lead to increased litigation and mass uncertainty.
3. The Proposed Rule should exclude executives, highly paid employees, highly skilled employees, and those with access to a company's confidential information.

The comment period closed with over 26,686 individuals, businesses, and coalition groups filing comments with the FTC. It is now up to the FTC to review the comments and decide how to proceed with the Proposed Rule and whether to revise it or finalize it as proposed. We expect any final rule to be challenged by the business community in court. Our [labor & employment practice](#) regularly advises companies on defending and enforcing non-competition, non-disclosure and non-solicitation agreements and we will continue to monitor the FTC's rulemaking on this important issue for employers.