JANUARY 20, 2023 | REGULATORY & GOVERNMENT OVERSIGHT

Join CMC's Coalition to Combat the FTC's Ban of Noncompete Agreements

Earlier this month, the Federal Trade Commission (FTC) issued a Notice of Proposed Rulemaking for its proposed rule that would essentially prohibit employers from entering into noncompete agreements with any employee, as well as with independent contractors, interns, volunteers, and other types of workers. The proposed rule would require employers to withdraw any existing noncompete agreements and inform employees that noncompete agreements no longer apply. The proposed rule would also make it unlawful for an employer to enter into a noncompete agreement with an employee, to attempt to enter into such an agreement with an employee, or to suggest that an employee is bound by a noncompete agreement when the employee is not.

While the FTC may justify this proposed rule as necessary to allow workers to move freely without restrictions, we believe that this rule, if passed, would severely compromise a company's ability protect its trade secrets and other confidential information, and could negate a company's significant investment in valuable investments in its employees, including employee training. Indeed, there are countless reasons why a narrowly tailored noncompete agreement is a necessary tool that has been, and should continue to be, in an employer's arsenal to protect its significant investment in its employees and the information to which they are privy.

The rule is currently open for comment. To that end, ***Conn Maciel Carey LLP is organizing a new fee-based coalition of employers and trade groups to advocate for the most reasonable FTC rule possible,*** with the goal of helping to shape any rule that the FTC ultimately promulgates in such a way that the rule is palatable to employers. We would be honored to partner with your organization in this endeavor. ***Accordingly, if your organization is interested in participating this coalition, please let me know as soon as you are able.*** Once we gain an understanding of the industries represented by the coalition, we will develop a refined plan for how to address different industries' interests in our comments, and also will be in a position to determine the exact fee structure for participation.

We intend to organize a meeting during the final week in January – on January 30, 2023. During that organizing call, we will discuss the FTC's plans for this rulemaking and the statements it has made in support of the proposed rule. We also will brainstorm about the development of a set of comments in response to the proposed rule. The public comment period is scheduled to close on March 10, 2023. Commissioner Christine Wilson, who dissented from issuing the proposed rule, urged parties to submit comments. Thus, we believe that these comments could be extremely helpful in forming the basis for substantive change. Thereafter, once the public comment period closes, the agency will review the comments and issue a final rule that will hopefully

incorporate our comments.

Happy New Year.

Kara and CMC's National Labor & Employment Practice Group