

COLUMNS

How will the ban of noncompete clauses impact the fashion industry?

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The FTC banned most non-compete arrangements effective Aug. 21, 2024. How will this affect the fashion industry?

First, let's discuss the ban itself.

Trading talents

Under the FTC's new rule, existing noncompete agreements for all workers other than senior executives will no longer be enforceable after the law's effective date.

A senior executive is someone who earns \$151,164 annually or more and who is in "policy-making positions". That is someone who has the final say in decisions that are of significant impact (e.g. a CEO) but does not include individuals who advise or influence decision-making (e.g. a VP).

Starting in late August, fashion companies are barred from entering into, or attempting to enforce, any new noncompete agreements, even if they are made with senior executives.

The FTC requires fashion companies to provide notice to workers other than senior executives who are bound by an existing noncompete that they will not be enforcing any noncompete provisions or agreements against them.

The FTC believes that the use of a non-disclosure agreement (NDA) is sufficient to protect proprietary and confidential information.

Some exceptions

As written, the new law is wide-sweeping with little exception. The exceptions are set forth below:

- Noncompetes for senior executives earning at least \$151,164 per year who were bound by a restrictive covenant prior the rule's effective date;
- Noncompetes entered into by a person pursuant to a bona fide sale of a business entity;
- Noncompetes related to causes of action that began before the rule's effective date; and

- Circumstances where there is a good faith belief that the ban does not apply.

Next steps

For fashion companies, this is a big change to the way they conduct business.

Take artistic director Hedi Slimane, a Midas of sorts. There was a two-year gap between the end of his creations at Saint Laurent and the beginning of his creations at Celine.

Was that hiatus from fashion due to a noncompete agreement? Maybe.

After August 21, when a designer moves from one house to another, it most likely will be by choice.

For those professionals at the top executives, lead designers, etc., companies can offer garden leave if they want to secure a gap in employment.

For those in the middle, however, companies may select to outsource jobs to countries where noncompetes are permitted or limit access to information, making it more difficult for employees to compete when changing jobs.

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