**Westerville Area Chamber office 99 Commerce Park Dr. 43082**

**Agenda Tuesday, March 7, 2022, 3:30-4:30 PM**

***Attendees***: Jeff Akers, Amy Balster, Polly Clavijo, Laura Hartman, Gene Hollins, Dr. John Kellogg, Brandon Lawson, Jeannie Mok, Michael McGreevy, and Staff member: Janet Tressler-Davis

1. Welcome – Introductions, Jeff Akers

2. Members of Committee Teams

* Healthcare – Andy H.
* Taxation/Worker’s Comp. Brandon/Charlene
  + At the federal level, the elimination of a non-compete clause is going through the process. Please see the language of the proposed rule and an article from the Ohio Chamber of Commerce at the bottom of these minutes.
  + [State HB1: Property tax roll-back](https://www.legislature.ohio.gov/legislation/135/hb1) – the State currently picks up 10% of every resident’s property tax. The State proposed a different funding solution for the setback. For WCSD, if this goes through, it will go cause a $12.5 shortage from levy funds.
  + [State SB1: School Board of Education language](https://www.legislature.ohio.gov/legislation/135/sb1)- to continue the changes on and after that date to rename the Department of Education as the Department of Education and Workforce; to create the position of Director of Education and Workforce; and to reform the functions and responsibilities of the State Board of Education and the Superintendent of Public Instruction.
* Workforce: WorkWISE – John/Janet/Gene
  + Westerville Prepared – May Westerville Works Week
    - Wednesday, May 17th – 2nd Annual Westerville Prepared event

3. Legislative Roundtable, April 20, 8:00 AM, Janet

* Invitation-only event – present for the event will be two State reps, a County rep, a City rep, and a Genoa Twsp rep.

4. City Ec. Dev., WorkWISE and Zoning Update, Rachel Ray, City of Westerville Econ. Dev. Dir., and Janet

* The SlideDeck will be provided with the meeting minutes.
* Businesses that would like to engage in this work are welcome to contact Janet.
* [www.westerville.org/workwise](http://www.westerville.org/workwise)

5. Future Meeting Topics

* **APRIL MTG:** Boyette Strategic Advisors – your input on advancing the growth of our bus. Community
  + Members of the BIOP Committee will join us.
* **MAY MTG:** COTA Update and future projects
* State Budget from the Ohio Chamber’s perspective
* August MTG: Recess for this month

6. Tuesday, April 4th at 3:30 PM – The Business Advocacy Council meets the first Tuesday of every month

7. Adjourn

**I. Overview of the Proposed Rule**

A non-compete clause is a contractual term between an employer and a worker that typically blocks the worker from working for a competing employer, or starting a competing business, within a certain geographic area and period of time after the worker's employment ends. Non-compete clauses limit competition by their express terms. As a result, non-compete clauses have always been considered proper subjects for scrutiny under the nation's antitrust laws. (1)In addition, non-compete clauses between employers and workers are traditionally subject to more exacting review under state common law than other contractual terms, due, in part, to concerns about unequal bargaining power between employers and workers and the fact that non-compete clauses limit a worker's ability to practice their trade. (2)

In recent decades, important research has shed light on how the use of non-compete clauses by employers affects competition. Changes in state laws governing non-compete clauses have provided several natural experiments that have allowed researchers to study the impact of non-compete clauses on competition. This research has shown the use of non-compete clauses by employers has negatively affected competition in labor markets, resulting in reduced wages for workers across the labor force—including workers not bound by non-compete clauses. (3)This research has also shown that, by suppressing labor mobility, non-compete clauses have negatively affected competition in product and service markets in several ways. (4)

In this rulemaking, the Commission seeks to ensure competition policy is aligned with the current economic evidence about the consequences of non-compete clauses. In the Commission's view, the existing legal frameworks governing non-compete clauses—formed decades ago, without the benefit of this evidence—allow serious anticompetitive harm to labor, product, and service markets to go unchecked.

Section 5 of the Federal Trade Commission Act (“FTC Act”) declares “unfair methods of competition” to be unlawful. (5)Section 5 further directs the Commission “to prevent persons, partnerships, or corporations . . . from using unfair methods of competition in or affecting commerce.”  (6)Section 6(g) of the FTC Act authorizes the Commission to “make rules and regulations for the purpose of carrying out the provisions of” the FTC Act, including the Act's prohibition of unfair methods of competition. (7)

Pursuant to Sections 5 and 6(g) of the FTC Act, the Commission proposes the Non-Compete Clause Rule. The proposed rule would provide it is an unfair method of competition—and therefore a violation of Section 5—for an employer to enter into or attempt to enter into a non-compete clause with a worker; maintain with a worker a non-compete clause; or, under certain circumstances, represent to a worker that the worker is subject to a non-compete clause. (8)

The proposed rule would define the term “non-compete clause” as a contractual term between an employer and a worker that prevents the worker from seeking or accepting employment with a person, or operating a business, after the conclusion of the worker's employment with the employer. (9)The proposed rule would also clarify that whether a contractual provision is a non-compete clause would depend not on what the provision is called, but how the provision functions. As the Commission explains below, the definition of non-compete clause would generally not include other types of restrictive employment covenants—such as non-disclosure agreements (“NDAs”) and client or customer non-solicitation agreements—because these covenants generally do not prevent a worker from seeking or accepting employment with a person or operating a business after the conclusion of the worker's employment with the employer. However, under the proposed definition of “non-compete clause,” such covenants would be considered non-compete clauses where they are so unusually broad in scope that they function as such. (10)

The proposed rule would define “employer” as a person—as the term “person” is defined in 15 U.S.C. 57b-1(a)(6)—that hires or contracts with a worker to work for the person. (11)The proposed rule would define “worker” as a natural person who works, whether paid or unpaid, for an employer. The proposed rule would clarify that the term “worker” includes an employee, individual classified as an independent contractor, extern, intern, volunteer, apprentice, or sole proprietor who provides a service to a client or customer. (12)

In addition to prohibiting employers from entering into non-compete clauses with workers starting on the rule's compliance date, the proposed rule would require employers to rescind existing non-compete clauses no later than the rule's compliance date. (13)The proposed rule would also require an employer rescinding a non-compete clause to provide notice to the worker that the worker's non-compete clause is no longer in effect. (14)To facilitate compliance, the proposed rule would (1) include model language that would satisfy this notice requirement  (15)and (2) establish a safe harbor whereby an employer would satisfy the rule's requirement to rescind existing non-compete clauses where it provides the worker with a notice that complies with this notice requirement. (16)

**Ohio Chamber of Commerce Commentary**

**DEVELOPMENTS THAT MATTER**

**Here’s How Businesses Use Noncompetes**

The Federal Trade Commission’s proposed rule to ban noncompete clauses in employment contracts has raised concerns from across the business community. The Chamber asked businesses how they use noncompetes and how this rule might affect their operations.

Why it matters: The FTC’s sweeping rule would drastically impact how businesses hire, invest in employees, and protect sensitive information.

By the numbers:

* 67% agreed that a near-total ban on noncompete agreements would hurt their business’s talent strategy and/or compensation strategy.
* 80% stated they use some form of restrictive covenants including noncompete agreements.
* 62% stated that less than 10% of their workforce is covered by noncompete restrictions.
* 78% responded that where employees are covered under a restrictive covenant, additional compensation that covers the agreement’s length or longer is provided.

Our take: “For the Federal Trade Commission to promulgate a rule of this nature it needs statutory authority to do so, but also has to make a compelling case that such a federal rule is necessary,” explains Stephanie Ferguson, Chamber Director of Global Employment Policy and Special Initiatives. “The FTC’s proposed rule has failed on both accounts.”