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FTC Bugs Pest Control Companies Over Non-Compete Agreements

The Federal Trade Commission on April 15 issued a complaint against national pest control company Rollins, Inc., to cease enforcing its non-compete agreements against its 18,000-employee workforce. Rollins companies include Orkin, HomeTeam, and Critter Control. The FTC alleged that Rollins' non-compete agreements were required of "all newly hired employees...regardless of their position or responsibilities." The agreements precluded the employees from working for a competitor for two years after working for Rollins and from working for a competitor within a 75-mile radius of the Rollins location where the employee worked.

According to Daniel Guarnera, Director of the FTC's Bureau of Competition, "...the FTC is fighting for American workers to ensure that they have the freedom to pursue new job opportunities and better pay. The American economy runs best when workers are not limited by noncompete agreements that distort competition and pervert workers from changing jobs, starting competing businesses and earning higher wages."

A properly drafted noncompete should be enforceable. Note that several states regulate the use of noncompete agreements. In addition to making sure the agreement complies with state law, employers should consider the following suggestions and discuss them with counsel:

1. Avoid taking an across-the-board approach that places all employees, regardless of responsibilities and access to customers or confidential information, under a non-compete. This has been a common element of the FTC's allegations against Rollins [and in its complaint against pet cremation service Gateway Services](#).
2. Consider whether the same ends can be reached via non-solicitation agreements applicable to customers and/or employees, rather than a general non-compete.
3. Have robust policies and practices to protect confidential information, including business practices, customers, pricing, and marketing.
4. Cover what is needed to protect the business, and not more than that.
5. If a noncompete may include not working for a competitor, be reasonable in the duration and geographic scope of that restriction.

Non-compete agreements should be reviewed by counsel annually to be sure the employer's interests are protectable. Too often, employers seek to enforce a non-compete that is out of date and out of compliance.

If you have any questions or would like additional information, please contact Richard Lehr at (205) 323-9260 or rlehr@lmvtlaw.com.