Bob Young Quoted in Massachusetts Lawyers Weekly's "Business bar questions FTC's proposed ban on noncompetes"

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Earlier this month, the Federal Trade Commission (FTC) unveiled a rule to ban noncompete agreements. The rule would make it illegal for an employer to enter into or attempt to enter into a noncompete with a worker, maintain a noncompete with a worker, or represent to a worker that the worker is subject to a noncompete agreement.

The proposed rule provides a key exception to the ban for a noncompete clause that is entered into by a person who is selling a business "or otherwise disposing of all of the person's ownership interest in the business entity, or by a person who is selling all or substantially all of a business entity's operating assets, when the person restricted by the non-compete clause is a substantial owner of, or substantial member or substantial partner in, the business entity at the time the person enters into the non-compete clause." For purposes of the rule, "substantial owner," "substantial member," and "substantial partner" mean someone holding at least a 25 percent ownership interest in a business entity in question.

Bob Young spoke with *Massachusetts Lawyers Weekly* about the FTC's proposed rule and the sale-of-business exception:

> "You could have someone who is a 24 percent owner and has been CEO of the company for 10 years," Bob said. "The company gets sold and that person can go across the street the next day and open a competing business. That would be a massive change."

Another issue with the proposed rule is that the definitions include a "functional test" for whether a contractual term is a noncompete clause.

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> Bob noted the functional test poses the risk of overturning nonsolicit agreements and nondisclosure agreements. He stated: "It's enough of a sea change to have noncompetes thrown out nationwide. But to have to run the risk of having something like a nondisclosure or nonsolicit being unenforceable, that would just amplify the sea change."

Continue reading "Business bar questions FTC's proposed ban on noncompetes" on the *Massachusetts Lawyers Weekly* website (subscription required).

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