

WHAT'S INSIDE

Non-compete Provisions to be Nationally Unenforceable

The FTC has issued a final rule banning existing and future non-competes for employees and independent contractors with limited exceptions. Does your non-compete fall within one of the exceptions?

The Pros and Cons of a Stock Purchase

Stock purchase agreements are a common way to purchase an existing business. What are considerations before entering into this type of contract?

Firm Named Winner of Tulsa People's A-List for Full-Service Law Firm!

The Firm has been named a top full-service law firm in Tulsa by TulsaPeople's Magazine.

Increased Salary Thresholds under Fair Labor Standards Act

The Department of Labor has increased the salary thresholds for certain employees to be classified as exempt under the FLSA. Is your business compliant with the new rule?

DID YOU KNOW?

An estimated 18% of all U.S. workers are covered by non-compete covenants. This equates to 30 million people!

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Non-compete Provisions to be Nationally Unenforceable

By: Shareholder Spencer C. Pittman

On April 23, 2024, the Federal Trade Commission issued a final rule banning “non-compete” covenants on a nationwide scale. The ban would affect both existing and future non-compete provisions. The FTC explained its ruling was to promote competition, protect the fundamental freedom of workers to change jobs, foster new business formations, and increase innovation.

Generally speaking, a non-compete provision or covenant is a legal contract or clause within a contract restricting a person (usually an employee or business partner) from engaging in activities that compete with their employer or business associate. The primary purpose of a non-compete is to protect a company's business interests, trade secrets, and confidential information by preventing former employees or partners from using that knowledge to benefit a competitor. The enforceability of non-competes varies widely by jurisdiction. Some states, such as Florida, have lenient rules on non-competes, which are often strictly enforced. Other states, such as Oklahoma, have stringent laws that highly scrutinize non-competes. The FTC's final rule, however, would supersede all conflicting state law if the state's law would permit or otherwise allow conduct that will be banned in the final rule.

The FTC's final rule takes the more strictly enforced approach by prohibiting employers from entering into (or attempting to enter into) a non-compete with a worker, which includes both employees and independent contractors. The final rule provides for certain exceptions to this ban. For example, employers may maintain *existing* non-competes for “senior executives” earning more than \$151,164 annually and who are in policy-making positions. However, the rule does not permit *new* non-competes for these senior executives. Other exceptions to the final rule include non-competes pursuant to the bona fide sale of a business entity or the enforcement of non-competes that accrued prior to the effective date of the final rule (such as in litigation). The FTC's rule also requires employers to post in a clear and conspicuous place a notice at the workplace that non-competes cannot be legally enforced against workers.

The FTC's rule has an effective date of September 4, 2024. If you or your business have an existing non-compete with workers and have questions or concerns about its enforceability, please do not hesitate to contact Shareholder Spencer C. Pittman at spencer@wintersking.com.



The Pros and Cons of a Stock Purchase

By: Shareholder Spencer C. Pittman

As part two of a series on the primary ways to acquire a closely-held existing business, this article explores the pros and cons of acquiring the stock rather than the assets of an existing business.

A stock purchase results in the acquisition of the company as a whole, including all assets *and* liabilities. This means an advantage of a stock purchase is simplicity and business continuity in its operations because the only change is the corporate ownership at the shareholder level without interrupting the business itself (*i.e.*, no visible change in the public’s eyes). Also, absent a provision to the contrary, existing contracts, leases, and permits would not require assignment since the company would continue in existence. Unlike asset purchases, which require all assets to be individually considered before being transferred, a stock purchase easily transfers broadly all assets to the new owner. This may reduce due diligence efforts and lessen transaction costs.

A disadvantage of a stock purchase is the inheritance of all liabilities, known and perhaps unknown. Even the most ironclad due diligence may not uncover all liabilities of a company. If a purchaser acquires an undisclosed liability, the purchaser may only have the option to legally pursue the seller. Most stock purchases contain certain representations and warranties, identify the liabilities of the company, and contain an indemnification in favor of the purchaser for undisclosed liabilities. However, relying solely on indemnification to protect against third-party claims can be risky if the indemnitor has little to no assets. Another potential issue in a stock purchase is shareholder approval for the transaction. The governing document(s) of the company may have complicated provisions regarding the purchase or sale of a majority of the outstanding shares/units. Some shareholders may push back on the purchase/sale of the business. This could lead to untimely litigation or a derivative suit, which could delay a closing or a termination of the stock purchase agreement.

Choosing between a stock or asset purchase depends on a variety of factors, which were outlined in last quarter’s newsletter. Risk tolerance for a stock purchase should be higher due to the possibility of acquiring undiscovered liabilities through due diligence. However, operational continuity and ease of a stock purchase may be more favorable to certain business purchasers. If you want more information on stock or asset purchase agreements, contact Shareholder Spencer C. Pittman at spencer@wintersking.com.



Firm Named the Winner of Tulsa People’s A-List for Full-Service Law Firm!

Winters & King is thrilled to announce that the firm has been named the Winner of the “Full-Service Law Firm” category in TulsaPeople’s annual Reader’s Choice A-List’s award for 2024. This recognition is a testament to the firm’s commitment to excellence and the support from its valued clients and community.

The TulsaPeople’s annual Reader’s Choice A-List is organized by TulsaPeople Magazine, which celebrates the best businesses in and around the City of Tulsa. TulsaPeople describes the A-List as encompassing “... the best in Tulsa when it comes to restaurants, shops, service providers, attractions and more — all chosen by the readers of TulsaPeople.”

Increased Salary Thresholds under Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) requires certain executive, administrative, and professional employees to be paid at least a minimum salary amount to be classified as exempt from the FLSA’s minimum wage and overtime requirements. In April 2024, the Department of Labor issued a final rule raising the minimum standard salary amount and the total annual compensation requirement for highly compensated employees for FLSA exemption. The changes to the salary/earning thresholds are reflected in the below chart:

	Current Amount	Minimum Salary Amount (starting July 1, 2024)	Minimum Salary Amount (starting Jan. 1, 2025)
Standard Salary Level	\$684/week (or \$35,568/year)	\$844/wk (or \$43,888/year)	\$1,128/week (or \$58,656/year)
Annual Pay for Highly Compensated Employees	\$107,432/year, (and at least \$684/week)	\$132,964/year (and at least \$844/week)	\$151,164/year (and at least \$1,128/week)

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