Did the White House's "Call to Action" Get"Trumped"?

Insights
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The White House, under the Obama Administration, recently issued a "Call to Action" to state legislators across the country for non-compete reform. The Call to Action was a culmination of a months-long investigation by the Obama Administration. It reflected a growing movement amongst the states, including Illinois, Massachusetts, and Michigan, and others, for non-compete reform.

The White House recommended "one or more" of three "best-practice policy objectives": (1) banning non-competes for categories of workers (such as low wage earners or workers in public health and safety), (2) improving the transparency and fairness of non-competes (through notice or consideration provisions or regulating the timing of execution), and (3) encouraging employers to draft enforceable agreements (through the use of the "red pencil doctrine").

Most of these practices would result in significant changes to the non-compete landscape. In particular, the widespread adoption of the "red pencil doctrine" (only adopted in 5 states) would be an adjustment for many employers and could result in the voiding of entire agreements for the unwary. However, with the recent election of Donald Trump, it is unlikely that the White House will continue to push this agenda. Trump is a seasoned business person who has regularly used non-competes and other restrictive covenants to protect his interests, including with members of his own campaign.

That being said, even without White House support, it is likely that non-compete reform will continue at the state level. This phenomenon started with state legislators and likely will continue there. It is an issue that has garnered public interest, most notably involving the use of non-competes with low-wage workers. Thus, the state-by-state approach to regulating non-competes will continue, creating real difficulties for national or regional employers who operate in a multistate environment. Moreover, as the state laws change, employers need to be able to adapt with them. Therefore, employers should continue consulting with counsel to stay on top of this rapidly changing environment so they have properly drafted non-competes that are enforceable and will be there when they are needed.