



# Monthly Strategies

HR Strategies, LLC

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## FTC Bans Non-competes

The Federal Trade Commission (FTC) voted on April 23, 2024, to enact a new rule that would invalidate non-compete agreements for virtually all employees, with the exception of some C-suite positions. It is our opinion, that it is highly unlikely this will go into effect on August 21, 2024, 120 days after publishing in the Federal Register, due to lawsuits already filed. Just in case it does, employers need to prepare. First, it's important to review the agreements you have in place and modify them to comply with the new requirements. Employers will need to determine who needs to be contacted, both current and former workers, in writing to inform them that their non-competition clause is invalid. Below is a sample communication that was included in the 570-page final rule. More to come in future Monthly Strategies' editions.

A new rule enforced by the Federal Trade Commission makes it unlawful for us to enforce a non-compete clause. As of [DATE EMPLOYER CHOOSES BUT NO LATER THAN EFFECTIVE DATE OF THE FINAL RULE], [EMPLOYER NAME] will not enforce any non-compete clause against you. This means that as of [DATE EMPLOYER CHOOSES BUT NO LATER THAN EFFECTIVE DATE OF THE FINAL RULE]:

- You may seek or accept a job with any company or any person—even if they compete with [EMPLOYER NAME].
- You may run your own business—even if it competes with [EMPLOYER NAME].
- You may compete with [EMPLOYER NAME] following your employment with [EMPLOYER NAME].

The FTC's new rule does not affect any other terms or conditions of your employment. For more information about the rule, visit [ftc.gov/noncompetes](https://ftc.gov/noncompetes). Complete and accurate translations of the notice in certain languages other than English, including Spanish, Chinese, Arabic, Vietnamese, Tagalog, and Korean, are available at [ftc.gov/noncompetes](https://ftc.gov/noncompetes).

## Pregnant Workers Fairness Act

The U.S. Equal Employment Opportunity Commission (EEOC) issued a [final rule](#) to implement the [Pregnant Workers Fairness](#)

[Act](#) (PWFA), providing important clarity that will allow pregnant workers the ability to work and maintain a healthy pregnancy and help employers understand their duties under the law. The PWFA requires most employers with 15 or more employees to provide “reasonable accommodations,” or changes at work, for a worker’s known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship.

The PWFA builds upon existing protections against pregnancy discrimination under [Title VII of the Civil Rights Act](#) of 1964 and access to reasonable accommodations under the [Americans with Disabilities Act](#).

The final rule was published in the Federal Register on April 19<sup>th</sup> and becomes effective on June 18, 2024.

This final rule provides important information and guidance to help employers meet their responsibilities, and to jobseekers and employees about their rights. It encourages employers and employees to communicate early and often, allowing them to identify and resolve issues in a timely manner.”

Highlights from the final regulation include:

- Numerous examples of reasonable accommodations such as additional breaks to drink water, eat, or use the restroom; a stool to sit on while working; time off for health care appointments; temporary reassignment; temporary suspension of certain job duties; telework; or time off to recover from childbirth or a miscarriage, among others.
- Guidance regarding limitations and medical conditions for which employees or applicants may seek reasonable accommodation, including miscarriage or still birth; migraines; lactation; and pregnancy-related conditions that are episodic, such as morning sickness. This guidance is based on Congress’s PWFA statutory language, the EEOC’s longstanding definition of “pregnancy, childbirth, and related medical conditions” from Title VII of the Civil Rights Act of 1964, and court decisions

interpreting the term “pregnancy, childbirth, or related medical conditions from Title VII.

- Guidance encouraging early and frequent communication between employers and workers to raise and resolve requests for reasonable accommodation in a timely manner.
- Clarification that an employer is not required to seek supporting documentation when an employee asks for a reasonable accommodation and should only do so when it is reasonable under the circumstances.
- Explanation of when an accommodation would impose an undue hardship on an employer and its business.
- Information on how employers may assert defenses or exemptions, including those based on religion, as early as possible in charge processing.

More information about the PWFA and the EEOC’s final rule, including resources for employers and workers, is available on the EEOC’s [“What You Should Know about the Pregnant Workers Fairness Act”](#) webpage.

**What should employers remember about the PWFA and reasonable accommodation?**

- Train supervisors about the PWFA. First level supervisors may be particularly likely to receive accommodation requests and should be trained about how to respond, including how to avoid retaliating against those who request or use a reasonable accommodation.
- Workers do not need to use specific words to request an accommodation to begin the interactive process. Once an employee requests an accommodation, use the interactive process.
- Limitations may be minor and may be associated with an uncomplicated pregnancy and may require accommodations that are easy to make.
- A worker may need different accommodations as the pregnancy progresses, they recover from childbirth, or the related medical condition improves or gets worse.
- For assistance identifying possible reasonable accommodations, consult the Job Accommodation Network (JAN) (<https://askjan.org/>). JAN is a free, expert,

confidential service that helps workers and employers with reasonable accommodations.

***DE Harassment Prevention Training***

The Delaware law that specifically addresses prohibition against sexual harassment under the Delaware Discrimination in Employment Act (DDEA), requires anti-sexual harassment training requirements for employers, with 50 or more employees in the state, every two years. Training must be provided within one year for new employees and supervisors. Contact HR Strategies to schedule your organization’s required training for a live onsite or virtual interactive class.

***Planning for Success***

Having a successor lined up for critical roles is key to business success. With a well-planned succession program organizations maintain continuity during leadership transitions.

So, what is succession planning? It is the process of identifying the critical positions within your organization and developing action plans for individuals to assume those positions.

***Challenges of Succession Planning***

Some common challenges to succession planning include a lack of executive buy-in, outgoing leaders being uncomfortable with planning for a successor, and not adequately preparing the next generation of leaders. It’s been found that some business leaders are reluctant to leave the organization and want to control their legacy as well as their concern that the transition will be immediate. It’s important that communications include that the succession plans are usually two or more years away and that there aren’t predetermined exit dates.

Another challenge is that the leaders who are typically in the succession plan also tend to be the busiest, and their day-to-day priorities take precedence over succession. It’s important for business leaders to find a way to help them understand why succession planning is critical for the future of the business and this is more critical than their day-to-day responsibilities.

We have also found that leaders may realize that they’ve failed to develop viable successors. As a result, you need to be continuously assessing your team’s bench strength. Once you identify a leader, you need to be able to identify and track them as a

leader for a full business cycle, recognize any skills gaps and put a plan in place to make sure they are ready for that next role.

Another area to be prepared for is if the outgoing leader is recommending someone as a successor and it's known that the person's results are not great. Make sure your succession plan includes a clear assessment of the capabilities of the current leadership team and how they have been performing over the past two years.

### Crafting a Plan

One way to gain succession planning buy-in from the executive team is to ensure it is part of your strategic planning and it's aligned with the vision of the organization. It's best to start with one leader and one role, especially if resources and bandwidth are limited.

As you are creating a plan, focus on leadership development capabilities that are available to the organization, and make sure you are delivering results.

As we all know, the performance management process is critical to assessing talent. If you don't have a performance management process that uses metrics on how leaders are performing today and what the potential for performance is in the future, it's going to be difficult to move forward with succession planning. We need to be able to answer the question, who are the leaders who have performed at or above expectations over a certain period? How does their performance line up with the growth of the organization?

It's also important to understand that it may also be necessary to look externally to identify the right leader for a successor role.

At the onset it's important to prioritize key roles for succession planning, which may not always be those at the very top. Some organizations will be focused on the CEO and the CFO, but for others, it might be a regional sales leader or the general manager of a location. It's critical to figure out the key roles for your organization.

It's important to measure the outputs that are available. You've taken the time to identify successors and the most important roles that require a succession plan, so now you must measure the outputs, whether internal or external—the data available regarding mentorship, executive coaching, overall performance, and leadership. It's important to know when you may need to change

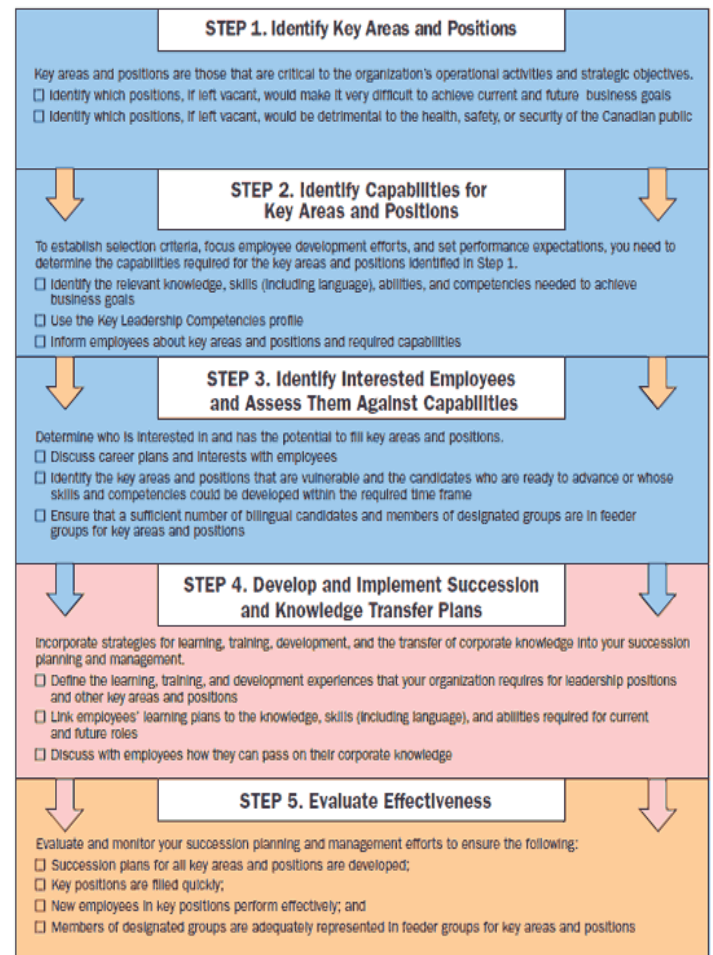
course. If you just let a plan run on its own without measuring performance, you could find out at a later stage that the leader is not the right successor.

Finally, for a succession plan to come to life, it is imperative that you put a name and a face to successors to ensure that other leaders can visualize the plan and provide feedback on the current bench strength in the organization.

Keep in mind, succession planning is not a one-size-fits-all process.

Begin with the end in mind and understand that succession planning is a process that can take years.

### Example of a Five Step Process



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