

Federal District Court in Texas Blocks FTC Non-Compete Final Rule

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Greenbaum, Rowe, Smith & Davis LLP Client Alert

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What You Need to Know

- A federal court has issued a nationwide injunction barring enforcement of the FTC's ban on non-compete provisions in employment contracts.
- Ruling in *Ryan LLC v. Federal Trade Commission*, the court held that the final rule exceeded the FTC's statutory authority and was "arbitrary and capricious" because it was "unreasonably overbroad without a reasonable explanation."
- The FTC has issued a statement indicating it will likely appeal the ruling. For this and other reasons, employers who currently rely on non-competes should continue to assess and revise the provisions in those agreements if necessary to ensure they are enforceable.

On August 20, 2024, the United States District Court for the Northern District of Texas invalidated the Federal Trade Commission's (FTC) ban on most non-compete provisions. As we have **previously advised**, the FTC's final rule was adopted in April 2024 and was scheduled to become effective on September 4, 2024.

U.S. District Judge Ada Brown wrote that the final rule "shall not be enforced or otherwise take effect on September 4, 2024, or thereafter," holding that the rule was arbitrary and capricious as the FTC did not indicate why it was necessary to ban virtually all non-competes rather than only targeting specific harmful ones.

Guidance for New Jersey Employers

While employers no longer need to take action regarding non-compete provisions by September 4, the FTC's challenge to non-competes is not necessarily behind us. The FTC has indicated that it is seriously considering an appeal to the Fifth Circuit, and that it could still challenge

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non-competes through enforcement actions on a case-by-case basis. The FTC could also seek an emergency order asking that its rule be allowed to take effect during the pendency of its appeal.

Therefore, and notwithstanding this reprieve, it remains an opportune time for employers to review all existing non-compete provisions to determine if and how they need to be changed to help ensure enforceability. A few states already have outright bans on the enforcement of non-competes. Many other states have restrictions on non-competes based on an employee's income or other factors.

While non-compete provisions are not banned and may be enforceable in New Jersey, this will only be the case if the provision at issue is determined to be reasonable. A provision will be reasonable if it (1) protects the legitimate interests of the party seeking to enforce it; (2) does not impose an undue hardship on the party to be restricted; and (3) is not injurious to the public.

It is likely that many existing non-compete provisions in New Jersey would not satisfy these criteria and should be revised to help ensure they are enforceable and protective of the interests of the employer. Among other factors, a non-compete provision may not be reasonable based on the length of time it is intended to remain in effect or the geographic territory covered by it.

We will continue to provide updates on the status of the FTC's final rule and on non-compete provisions in general. Please contact the author of this Alert with any questions or to discuss your specific circumstances.

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