

ALERT

Texas Federal District Court Sets Aside Federal Trade Commission Non-Compete Ban Nationwide

August 22, 2024

WHAT HAPPENED:

On Tuesday, August 20, the U.S. District Court for the Northern District of Texas issued a nationwide injunction barring enforcement of the Federal Trade Commission's (FTC) ban on non-compete agreements in employment contracts. The district court opinion specifically criticized the FTC's "one-size-fits-all" approach.

The FTC is currently evaluating its right to appeal this decision to the Fifth Circuit. Unless a higher court reverses or stays the decision, the final rule banning most non-competes **will not** become effective on September 4, 2024, and the FTC **will not** have the ability to enforce the rule.

BACKGROUND:

On April 23, 2024, the FTC issued the Non-Compete Clause Rule (the "final rule" or the "rule"), which would effectively ban the use and enforcement of non-compete agreements with limited exceptions. On August 20, 2024, the U.S. District Court for the Northern District of Texas invalidated the FTC's final rule - *Ryan LLC et al. v. Federal Trade Commission*, WL 3297524 (08/20/2024).

Ryan, LLC (Ryan) filed the lawsuit on April 23, 2024, arguing, among other things, that the final rule exceeded the FTC's rulemaking authority under the Federal Trade Commission Act ("FTC Act" or "the Act") and that the rule was arbitrary and capricious (i.e., unreasonable or made without regard for facts or circumstances). Several intervenor plaintiffs, including the U.S. Chamber of

Authors

Olaoluwaposi O. Oshinowo
Of Counsel
202.719.4275
ooshinowo@wiley.law

Ira Mirsky
Special Counsel
202.719.3411
imirsky@wiley.law

Practice Areas

Employment & Labor
FTC Regulation
Noncompetition and Trade Secrets

Commerce, joined the lawsuit to challenge the rule and protest the proposed abolishment of one of the most common vehicles for companies to protect their legitimate business interests from unfair competition.

The district court enjoined the FTC from enforcing the rule in a July ruling that only applied to the plaintiffs. The court's August 20 decision resolved motions for summary judgment filed by Ryan, the intervening plaintiffs, and the FTC. In applying the injunction nationwide, the court specifically rejected the FTC motion to have the judgment limited to the plaintiffs, explaining that the Administrative Procedure Act (APA) does not contemplate party-specific relief. Rather, the APA applies the same across all U.S. district courts.

In the opinion, the court held that the rulemaking provisions contained in the FTC Act do not expressly grant the agency authority to promulgate substantive rules, like the final rule, and that "the text and the structure of the FTC Act reveal the FTC lacks substantive rulemaking authority concerning unfair methods of competition ...". The court explained that, although the Act gives the FTC some rulemaking authority, that authority is limited to rules of a "housekeeping" nature.

The court also held that the final rule and the FTC's procedure for promulgating it were arbitrary and capricious. The court found that the FTC failed to demonstrate a rational basis for imposing the rule. It noted that the FTC was required to (but failed to) consider less disruptive alternatives than the final rule and, ultimately, expressed its belief that the final rule was based on flawed evidence, that the FTC failed to consider the positive benefits of non-compete agreements, and that the FTC improperly disregarded substantial evidence that supported the use of non-competes.

The final rule was set to take effect on September 4, 2024. However, the result of the *Ryan* decision is that, unless a higher court reverses or stays the August 20, 2024, decision, the FTC is barred from implementing or enforcing the final rule nationwide. Accordingly, the current patchwork of laws across jurisdictions governing the enforceability of non-compete agreements remains in place.

Wiley is closely monitoring all relevant developments in this area and is ready to assist employers as they continue to review and improve efforts to protect their legitimate business interests.