

TYPES NOT MAPPED YET August 22, 2024 | TTR not mapped yet | Susan M. Lorenc, Howard S. Lavin, Allyn Jaqua Lowell, Shahed Abualsamen

Federal Court Blocks Enforcement of FTC's Non-Compete Rule Nationwide

As most employers are aware (and as explained in detail in our April [Alert](#)), the Federal Trade Commission ("FTC") issued a Final Rule invalidating the use of employee noncompete agreements by most private employers. The Final Rule was set to take effect on September 4, 2024. On August 20, nearly two weeks prior to implementation, the Northern District of Texas set aside the Final Rule.

As background, a Texas employer, Ryan LLC, sued the FTC in the United District Court for the Northern District of Texas seeking an order enjoining the FTC from enforcing the Final Rule. Initially, the court issued a preliminary injunction blocking the Rule from taking effect, but only as to the parties in the case. On August 20, District Judge Ada Brown granted summary judgment against the FTC, issuing a nationwide injunction blocking enforcement of an FTC Final Rule. In reaching its decision, the court found that the Final Rule exceeded the FTC's statutory authority, reasoning that the FTC does not have authority to promulgate substantive rules addressing unfair methods of competition. The court also concluded that the sweeping Final Rule was arbitrary and capricious in violation of the Administrative Procedure Act because the FTC did not justify the broad scope of its ban.

This almost certainly is not the last word on the FTC's Final Rule. About three weeks ago a federal district court in Pennsylvania reached the opposite result in *ATS Tree Services v. Federal Trade Commission*. In that case, the court ruled that the FTC has clear legal authority to issue "procedural and substantive rules as is necessary to prevent unfair methods of competition."

Another federal court in Florida in *Properties of the Villages, Inc. v. Federal Trade Commission* recently issued a preliminary injunction limited to the plaintiff in that case, finding that the FTC Final Rule violated the major questions doctrine, which requires an agency to demonstrate clear congressional authorization when it issues a rule that has extraordinary economic and political significance.

In response to this ruling, an FTC spokesperson noted that the decision does not prevent the FTC from addressing noncompetes through case-by-case base enforcement actions. The FTC is expected to appeal the *Ryan* decision to the US Court of Appeals for the Fifth Circuit. Given the conflicting decisions in *Ryan* and *ATS*, this could eventually lead to a circuit split that results in the US Supreme Court deciding the fate the FTC's Final Rule. However, at least for now, the Final Rule banning most non-competes will not take effect on September 4, 2024.

Stay tuned. In the interim, if you have any questions, please contact anyone in our Labor & Employment Practice Group with whom you regularly work.



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