

## Court Blocks FTC Rule Banning Almost All Worker Non-Compete Deals

A federal court has issued a nationwide injunction blocking enforcement of the Federal Trade Commission's ("FTC") new rule that would ban nearly all non-competition ("non-compete") deals. The rule, issued on April 23, 2024 (the "Non-Compete Rule"), would broadly ban employer/employee non-compete agreements nationwide and was set to go into effect on September 4, 2024 ("Effective Date").<sup>1</sup> With this ruling, the FTC is enjoined from enforcing the Non-Compete Rule against employers.

As discussed in earlier client alerts regarding the FTC's [Proposed Rule](#) and [Final Rule](#), opponents of the Non-Compete Rule contend, among other things, that the FTC lacked constitutional and statutory authority to promulgate the Rule. In a recent opinion, the Hon. Ada Brown of the U.S District Court for the Northern District of Texas agreed that the Non-Compete Rule exceeds the FTC's rulemaking authority under the Federal Trade Commission Act ("FTC Act") and that the Rule is "arbitrary and capricious" in violation of the Administrative Procedures Act ("APA"). Accordingly, Judge Brown ordered that the Rule "shall not be enforced or otherwise take effect." *Ryan, LLC v. Federal Trade Commission*, Case No. 3:24-cv-986 (N.D. Tex. Aug. 20, 2024) (Memorandum Opinion and Order on Summary Judgment Motions).

*First*, Judge Brown observed, "the text and the structure of the FTC Act reveal the FTC lacks substantive rulemaking authority with respect to unfair methods of competition, under Section 6(g) [of the FTC Act]." The Court recognized that Congress granted the FTC the power to promulgate substantive rules regarding "unfair or deceptive acts or practices,"<sup>2</sup> however, Congress did not provide a similar "affirmative grant" of rulemaking power in the "unfair methods of competition" context. *Second*, Judge Brown found the Non-Compete Rule to be arbitrary and capricious, criticizing it as "unreasonably broad" and having "no end." The FTC, the Court concluded, "provide[d] no evidence or reasoned basis" for a "categorical" ban as opposed to less disruptive, targeted prohibitions.

The Court's order came just days before the Final Rule's original Effective Date, September 4, 2024. Earlier this summer, on July 3, 2024, the Court issued a preliminary injunction, which stayed the Effective Date and enjoined the FTC from implementing or enforcing the Non-Compete Rule as to the plaintiffs in *Ryan*. By contrast, the August 20 ruling applies a permanent injunction nationwide—until and unless the matter is appealed.

### **Judicial Split**

Beyond an expected appeal of the *Ryan* decision, the validity of the Non-Compete Rule remains unsettled. In fact, another federal court recently rejected a similar motion for a preliminary injunction to block enforcement of the Non-Compete Rule. *ATS Tree Servs. LLC v. FTC*, 2:24-cv-01743 (E.D. Pa. July 23, 2024) (Memorandum Opinion on Motion for Preliminary Injunction). Judge Kelley Brisbon Hodge of the U.S. District Court for the Eastern District of Pennsylvania found that the FTC *does* have statutory authority to promulgate substantive rules—not just procedural rules—to prevent unfair methods of competition. The court noted that "nothing" in Section 5 or Section 6 of the FTC Act expressly limits the FTC's rulemaking power to issuing exclusively procedural rules. The Court further explained that nowhere in the text does Congress expressly limit the FTC's enforcement mechanisms to adjudications; in fact, Congress does just the opposite by empowering the FTC to issue rules.

<sup>1</sup> 16 C.F.R. § 910.1; 89 Fed. Reg. 38342.

<sup>2</sup> See generally 15 U.S.C. § 46(g); 15 U.S.C. § 57a.

At least one other lawsuit remains pending in the Middle District of Florida, *Properties of the Villages v. FTC*, 5:24-cv-316 (M.D. Fla.) and others may be forthcoming. On August 15, 2024, the court in *Properties of the Villages* issued a preliminary injunction staying the Non-Compete Rule as to the plaintiffs in that case.

### **Key Takeaways**

Employers should continue to ensure that they are positioned to comply with the Non-Compete Rule, as discussed in prior client alerts regarding the [Proposed Rule](#) and [Final Rule](#), should any appeals court reinstate the regulation. Furthermore, the issue of restrictive covenants in employment agreements remains an area of legislative focus across the country. Thus, employers should continue to stay abreast of state laws that may limit or prohibit non-compete agreements.

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