

Employment

July 5, 2024

Federal Trade Commission's Non-Compete Ban Halted by Texas Federal Court... But Only for Limited Parties (For Now)By [Julie Levinson Werner](#) and [Amy C. Schwind](#)

As eagerly anticipated and predicted by many, on July 3, 2024, the United States District Court for the Northern District of Texas entered a preliminary injunction staying the Federal Trade Commission's (FTC) broad non-compete ban (the Non-Compete Final Rule) from going into effect. However, the Court limited its decision, at least for now, to only the specific plaintiffs and the plaintiff-intervenors before the Court in the case, declining to issue a nationwide injunction at this preliminary stage. In an added plot twist, the Court held that the relief was limited only to the actual plaintiff entities and not their members. So, for example, if a company were a member of the Chamber of Commerce, the Court's ruling would not (yet) apply to the specific company member. The Court further provided that, as the parties had not briefed the issue, it could not determine (yet) that the plaintiff-intervenor business entities had associational standing such that their business members could enjoy the benefit of the decision.

As we previously detailed [here](#), on April 23, 2024, the FTC voted 3-2 to approve the Non-Compete Final Rule banning all existing and new non-compete agreements for essentially all workers nationwide. The Non-Compete Final Rule includes a limited carve-out permitting existing noncompete agreements already entered into with "senior executives," which is a very narrow, precise term defined under the Non-Compete Final Rule. Nevertheless, the Non-Compete Final Rule prohibits employers from entering into a noncompete agreement with any worker, even a senior executive, after the effective date (which has now been enjoined only for limited parties).

Lawsuits were filed in short order challenging the Non-Compete Final Rule. The first-filed case, *Ryan, LLC v. FTC*, in which the Texas court just granted the narrowly tailored preliminary injunction, involves a global tax services and software provider alleging the FTC lacks the authority to prohibit noncompete agreements, the FTC is unconstitutionally structured, and that banning noncompete agreements imposes an undue burden on businesses. A number of business groups, including the Chamber of Commerce, wound up joining the case against the FTC in this suit as plaintiff-intervenors. In granting the preliminary injunction, the Court concluded that the plaintiffs are likely to succeed on the merits of their case that the FTC lacks statutory authority to promulgate the Non-Compete Final Rule, and that it is arbitrary and capricious.

At present, the only parties that can benefit from the Court's injunction are Ryan, LLC; Chamber of Commerce of the United States of America; Business Roundtable; Texas Association of Business; and Longview Chamber of Commerce. The decision, however, indicates that the Non-Compete Final Rule will continue to be the subject of intense judicial scrutiny. The Court intends to issue a final ruling on the merits by August 30, 2024, which could potentially prevent the Non-Compete Final Rule from going into effect at the national level.

On the other side of the country, in a case filed before the United States District Court for the Eastern District of Pennsylvania, *ATS Tree Services, LLC v. FTC*, a Pennsylvania tree service business also has challenged the Non-Compete Final Rule, similarly arguing that the FTC lacks the statutory authority to create substantive rules preventing unfair competition, the FTC has exceeded its authority, and the FTC Act, on which the FTC heavily relied to establish the Non-Compete Final Rule, is an unconstitutional delegation of law-making power to the FTC. Oral argument is set to be heard in that case on July 10, 2024, with the court scheduled to rule by July 23, 2024. It seems probable that the Pennsylvania court's decision may be at odds with the Texas court's decision in *Ryan, LLC*, making the issue ripe for higher court review.

At present, the uncertainty continues for those employers wondering whether they need to modify or eliminate their noncompete agreements. Companies that are focused on noncompete enforcement or that currently have employees subject to noncompetes should continue to closely monitor the situation. In any event, the current

landscape presents a good opportunity for employers to revisit the noncompete agreements they are using to ensure they comply with applicable state law, which varies considerably from state to state.

Lowenstein Sandler's Executive Compensation, Employment & Benefits Group is monitoring these developments closely. Please contact the authors or any other Lowenstein Sandler attorney with whom you regularly work if you have any questions. The authors thank Joy Kemunto, a summer associate, for her assistance with this alert.

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