



LEGAL UPDATES

Texas Federal District Court Issues Limited Preliminary Injunction as to FTC Noncompete Ban

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The U.S. District Court for the Northern District of Texas has granted a motion for preliminary injunction against the Federal Trade Commission ("FTC"), enjoining enforcement of the FTC's nationwide noncompete ban for the plaintiffs currently in front of the Court.

As discussed in our [June 6, 2023](#), [April 24, 2024](#), and [April 26, 2024](#) alerts, the FTC has issued a final Noncompete Rule that would ban future employment noncompete agreements as well as retroactively voiding most existing noncompete agreements with some limited exceptions. Although the Rule is scheduled to take effect on September 4, 2024, three separate lawsuits were filed following the Rule's publication—two in Texas federal court and one in Pennsylvania federal court. The complaints, in essence, argue, as summarized in our [May 29, 2024, blog post](#), that the Rule exceeds the FTC's authority and that the Rule's retroactive effect violates due process and the Taking's Clause of the Fifth Amendment of the U.S. Constitution.

In the Texas federal district court's ruling, Judge Ada Brown concludes that the plaintiffs in the case before her, Ryan, LLC and the U.S. Chamber of Commerce, presented enough evidence to establish a substantial likelihood of success as to their argument that the FTC does not have the power necessary to adopt broad rules with respect to unfair methods of competition and that the implementation of the FTC's Rule would likely result in irreparable harm. As such, she banned enforcement of the FTC Rule against the plaintiffs.

So, what happens now? It is important to note that the Court's injunction is currently limited to Ryan, LLC and the U.S. Chamber of Commerce. However, employers should be encouraged to hear that the Court, "intends to rule on the ultimate merits of this action on or before August 30, 2024." Additionally, the Court's 33-page decision makes clear that the Court finds the Noncompete Rule to be problematic and likely unenforceable for a number of reasons, namely:

- The FTC only has the authority to make "housekeeping rules" as opposed to "substantive rulemaking power;"

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- The current Rule disregards evidence supporting the benefits of non-compete agreements;
- The FTC failed to sufficiently address alternatives to issuing such a broad, all encompassing Rule; and
- Compliance with the Rule would result in financial injury to the plaintiffs in the pending case as well as to the public at large.

Although employers will need to wait until the end of August for a merit decision, it appears more and more likely that the FTC's non-compete ban is unlikely to go into effect on September 4, 2024.

We will continue to monitor developments in this matter and provide updates as they become available. For more information about the application of the FTC's noncompete ban, please contact [Caitlin Gehlen](#) or your regular Lathrop GPM attorney.