



LEGAL UPDATES

Texas Federal District Court Strikes Down FTC Rule Banning Noncompete Agreements

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In a ruling issued Tuesday, August 20, 2024, the U.S. District Court for the Northern District of Texas struck down the Federal Trade Commission's ("FTC") Noncompete Rule banning nearly all noncompete agreements, which had been scheduled to go into effect on September 4, 2024.

As a refresher, earlier this year the FTC [issued the Noncompete Rule](#) which would have retroactively and prospectively banned the use of noncompete agreements with employees, with some limited exceptions. Following the Rule's publication, multiple lawsuits were filed against the FTC arguing, as summarized in our firm's [May 29, 2024 blog post](#), that the Rule exceeded the FTC's authority and that the Rule's retroactive effect violated due process and the Taking's Clause of the Fifth Amendment of the U.S. Constitution.

As discussed in our firm's [July 5, 2024 alert](#) regarding this pending litigation, federal courts in Texas and Florida had issued limited preliminary injunctions staying the enforcement of the Rule for the specific plaintiffs in these lawsuits. The August 20, 2024 ruling by the Texas federal court, however, granted a request for a permanent injunction that has a nationwide effect. In her decision, Judge Ada Brown held that the FTC Rule is unlawful and unenforceable due to it exceeding the FTC's statutory authority and being arbitrary and capricious. Regarding the FTC's authority, Judge Brown held that the "plain reading" of the FTC Act makes clear that the FTC "lacks the authority to create substantive rules" related to unfair methods of competition and is instead only authorized to promulgate procedural rules. The Court also found the FTC Rule to be arbitrary and capricious for a number of reasons, including:

- The Rule is "unreasonably overbroad without a reasonable explanation;"
- The Rule "imposes a one-size-fits-all approach" without any rationale connecting the facts of a particular case to the choices made by an employer;
- The FTC lacks evidence to support its approach and alleged need for a rule broader than any state law currently in effect;
- The FTC Rule failed to consider less strict alternatives; and

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- The FTC's final Rule unjustly dismisses "compelling justifications" from and potential benefits to employers.

Although it is possible that the FTC will appeal this decision to the U.S. Court of Appeals for the Fifth Circuit, any such filing will take weeks if not months to move forward. While the outcome of any appeal can't be guaranteed, the FTC may take into account when deciding next steps that the Fifth Circuit Court of Appeals and current U.S. Supreme Court – should there be a later appeal accepted at that level – are considered to be more employer-friendly, which could make a successful appeal by the FTC unlikely.

In the meantime, employers can hold off on issuing any sort of notice to current and former employees about the status of their noncompete agreements and move forward with business as usual. However, given the current spotlight on noncompete agreements, employers should review their current practices to ensure their agreements are compliant with state law and narrowly tailored to protect the needs of their business. Despite the current roadblock in front of the FTC's Noncompete Rule, there are other avenues available to employees to challenge the enforceability of noncompete agreements. The FTC went as far as to release a statement following yesterday's decision stating that the ruling "does not prevent the FTC from addressing non-competes through case-by-case enforcement actions."

We will continue to monitor this matter and provide updates as they become available. If you have any questions about the Rule, please contact the author listed above or your regular Lathrop GPM contact.