

Insights

FTC Non-Compete Ban is Banned

The Employer Lawyers Blog

Lowndes

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On August 20, 2024, a federal court in Texas permanently blocked the Federal Trade Commission's (FTC) final rule banning most non-competes. U.S. District Judge Ada Brown granted summary judgment in favor of the plaintiffs in *Ryan LLC v. Federal Trade Commission, et al.* after finding that the FTC's final rule exceeded the agency's authority.

Judge Brown determined that the FTC had improperly overstepped its statutory authority by attempting to create a new rule banning non-competes. The rule was based on the FTC Act's "housekeeping rules," which lack statutory penalties, rather than the "substantive rulemaking power" provisions of the statute. The court also called the final rule "arbitrary and capricious" and concluded the final rule would cause irreparable harm. As a result, Judge Brown stated in her order that, **"The Non-Compete Rule, 16 C.F.R. § 910.1-.6, is hereby SET ASIDE and shall not be enforced or otherwise take effect on September 4, 2024, or thereafter."**

The court's ruling applies nationwide. As a result, employers can breathe a sigh of relief, at least for now, and can discontinue preparations for compliance with the final rule. Employers must still adhere to state laws governing the enforceability of non-compete clauses, which will remain unchanged within their respective jurisdictions.

Victoria Graham, an FTC spokeswoman asserted, "[The FTC is] seriously considering a potential appeal, and today's decision does not prevent the FTC from addressing non-competes through case-by-case enforcement actions." It is expected that the FTC will appeal the decision to the Fifth Circuit.

Lowndes attorneys will continue to monitor this issue and stand ready to assist.

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Rachel D. Gebaide

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